

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CELSIUS NETWORK LLC, *et al.*,

Debtors.

Chapter 11

Case No. 22-10964 (MG)

(Jointly Administered)

FINAL REPORT OF SHOBA PILLAY, EXAMINER

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Part One: Investigation Background.

Part One of this Report addresses the scope of, and investigative steps taken in, the Examiner's investigation.

I. Scope Of The Report.

On September 29, 2022, the Bankruptcy Court appointed Shoba Pillay (the "Examiner") to investigate and report on certain topics related to Debtors Celsius Network LLC and related entities.¹ The Court also directed the Examiner to review Celsius customer *pro se* filings on the Court's docket to determine whether her investigation should be expanded.² After considering those hundreds of filings and communicating with customers, the Examiner asked the Court to clarify that the Examiner's investigative mandate included an examination of Celsius's native currency, the CEL token, and Celsius's representations to its customers.³ The Court so clarified.⁴ After directing the

¹ *Order Approving the Appointment of Chapter 11 Examiner* dated September 29, 2022, *In re Celsius Network LLC*, Case No. 22-10964 (MG) [Dkt. 923]; *Order Directing Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code* dated September 14, 2022, *In re Celsius Network LLC*, Case No. 22-10964 (MG) [Dkt. 820] ("Examiner Order"). Unless otherwise indicated, all references to the "Dkt." are to filings found on the docket for the lead case, *In re Celsius Network LLC*, Case No. 22-10964 (MG).

Debtors in this case are Celsius Network LLC; Celsius KeyFi LLC; Celsius Lending LLC; Celsius Mining LLC; Celsius Network Inc.; Celsius Network Limited; Celsius Networks Lending LLC; Celsius US Holding LLC; GK8 Ltd.; GK8 UK Limited; and GK8 USA LLC. For ease of reference, this Report uses "Celsius" to include Celsius Network LLC and its affiliated debtors and debtors-in-possession.

² Examiner Order at ¶ 16.

³ *Examiner's Motion to Confirm Examination Scope or Alternatively for Expansion of the Scope of the Examination* dated October 18, 2022 [Dkt. 1112].

⁴ *Order Approving Examiner's Motion to Confirm Examination Scope or Alternatively For Expansion of the Scope of the Examination* dated November 1, 2022 [Dkt. 1260] ("Order Approving Examiner's Motion").

Examiner to confer with the parties,⁵ the Court further expanded the Examiner's investigative mandate to include an examination of claims that Celsius's business operations amounted to a Ponzi scheme.⁶

Consistent with the Court's Orders, the Examiner's Report therefore addresses the following subjects:

- “the Debtors’ cryptocurrency holdings, including a determination as to where the Debtors’ cryptocurrency holdings were stored pre-petition and are stored post-petition, and whether different types of accounts are commingled”⁷ and including “why and how other digital assets were converted into CEL tokens, and how these tokens were marketed, stored, and traded—including whether any of the Debtors’ trading practices involving CEL tokens generally or determinations of CEL tokens awarded as part of the Earn Rewards program—impacted their value;”⁸
- “the representations Debtors generally made in public representations to customers to attract them to their platform and about their cryptocurrency holdings and account offerings;”⁹
- whether “the Debtors used new deposits being made by customers to make payments or otherwise meet obligations to existing customers at a time when the Debtors had no other sources (whether liquid or which could have been monetized) from which to make such payments or meet such obligations;”¹⁰
- “the current status of the utility obligations of the Debtors’ mining business;”¹¹ and

⁵ Hearing Transcript (November 1, 2022), at 80:14-18.

⁶ *Stipulation and Agreed Order Modifying the Scope of Examiner Order* dated November 14, 2022 [Dkt. 1343] (“Stipulation and Agreed Order”).

⁷ Examiner Order at ¶ 3.

⁸ Order Approving Examiner's Motion at ¶ 2.

⁹ *Id.* at ¶ 3.

¹⁰ Stipulation and Agreed Order at ¶ 1.

¹¹ Examiner Order at ¶ 3.

- “the Debtors’ procedures for paying sales taxes, use taxes, and value added taxes and the extent of the Debtors’ compliance with any non-bankruptcy laws with respect thereto.”¹²

Parties are directed to the Examiner’s Interim Report, dated November 19, 2022, for the Examiner’s investigative findings regarding (i) “why there was a change in account offerings beginning in April 2022 from the Earn Program to the Custody Service for some customers while others were placed in a ‘Withhold Account;” and (ii) how and where the cryptocurrencies held in Custody and Withhold accounts were stored pre- and post-petition and whether assets in those accounts were commingled with other Celsius assets.¹³ Those findings are not repeated here.

II. Executive Summary.

The business model Celsius advertised and sold to its customers was not the business that Celsius actually operated. Through its website, marketing emails, Twitter, livestream town hall meetings, and other messaging, Celsius sold its customers on the concept that it was better than traditional “big banks.” By investing with Celsius, its customers were told that they would be able to “unbank” themselves and enjoy “financial freedom” as part of the Celsius community. Celsius emphasized that it put “its community first” and that its business would be “built on trust” and “transparency” with its community members. Celsius promoted itself as an altruistic organization, bragging in one

¹² *Id.* at ¶ 3.

¹³ *Interim Report Of Shoba Pillay, Examiner* dated November 19, 2022 [Dkt. 1411] (“Examiner’s Interim Report”).

blog post: “Can we really bring unprecedented financial freedom, economic opportunity and income equality to everyone in the world? We are Celsius. We dream big.”

Celsius boasted that its primary financial product—its “Earn” program—was the “safest place for your crypto.” Customers who participated in the Earn program transferred their crypto assets to Celsius in exchange for interest, or what Celsius called rewards. In turn, Celsius deployed its customers’ crypto assets—through further loans, investments, or on exchanges—to generate income, or what Celsius called yield. Celsius’s co-founder and majority owner, Alex Mashinsky, repeatedly told customers in his weekly livestream conversations (referred to as “Ask Mashinsky Anything” or “AMAs”) that customer-deposited coins “are your coins, not our coins . . . [i]t’s always your Bitcoin.” When asked what would happen in the event of a bankruptcy, Mr. Mashinsky told customers “coins are returned to their owners even in the case of bankruptcy.”

Celsius advertised that it knew how to generate high returns with low risk by doing “what Celsius does best”—carefully vetting its financial counterparties and ensuring that when those counterparties borrowed crypto assets from Celsius, they pledged “over 100% collateral” to secure their loans. Celsius sold its customers on the promise that Celsius would pay them “at least 5% annual interest” and that their rewards would equal each customer’s share of up to 80% of Celsius’s revenues.

Another cornerstone of Celsius's marketing strategy was its promotion of its native CEL token. Celsius told its customers that CEL was its "backbone" with Mr. Mashinsky repeatedly equating the value of CEL with Celsius's value. Celsius explained that it intended to raise the initial capital to fund its business by selling 325 million CEL through private pre-sales and an initial coin offering ("ICO") and that these sales would raise \$50 million. Celsius told customers that they would receive rewards in CEL that Celsius would obtain from its internal treasury (which would hold an additional 325 million CEL) or by buying CEL in the secondary market. According to Celsius, this process would create a self-sustaining "flywheel." Celsius's marketing efforts would start the wheel spinning by generating more users and thus more assets for Celsius to invest; Celsius in turn would earn more profits and buy more CEL in the market that it would use to pay rewards, and as result of the demand spurred by Celsius's CEL purchases, CEL's price would increase, generating more earnings for Celsius's customers.

From its inception, however, Celsius and the driving force behind its operations, Mr. Mashinsky, did not deliver on these promises. Behind the scenes, Celsius conducted its business in a starkly different manner than how it marketed itself to its customers in every key respect.

CEL Trading.

Celsius abandoned its promise of transparency from its start. Celsius's first significant transaction after it was formed was to launch its ICO, a transaction that Celsius expected would raise \$50 million. That did not happen. Instead, Celsius sold 203 million of the 325 million CEL offered for sale, raising

\$32 million. But Celsius never told its “community” that it failed to sell all of the CEL. Despite its promises of transparency, Celsius debated internally whether to tell its community how the ICO actually turned out but decided not to do so because it feared its community would be upset. Celsius also did not reveal that while Mr. Mashinsky originally pledged to purchase any unsold tokens from the ICO, he failed to close on that purchase. Those unsold tokens amounted to 117 million CEL.

Celsius also hijacked its flywheel, concealing from its customers the extent to which it was making the market for CEL. Initially, in 2018 and 2019, when the crypto markets were in decline, Celsius bought CEL, as it advertised it would, to pay rewards. During this time period, the price of CEL remained well below the ICO price of \$0.20.

But starting in 2020, Celsius decided to substantially expand its purchases of CEL for the purpose of increasing CEL’s price. Instead of buying CEL when it needed to pay rewards, Celsius began timing its purchases so that they would prop up CEL’s price by creating activity in the market. Celsius also began placing “resting” orders to buy CEL, which were triggered if the price of CEL dipped below a set amount. Celsius also began selling CEL in private over-the-counter (OTC) transactions, while making offsetting purchases of CEL in public markets where it believed its purchases would impact the trading price. Internally, Celsius referred to this new strategy as its “OTC Flywheel.”

Celsius’s buying spree worked to push the price of CEL higher and higher. Although the crypto markets were up in 2020 and 2021, the percentage increase

in CEL's price was significantly greater than the overall market increase, due primarily to Celsius's purchases of CEL. Between mid-March 2020 (just as Celsius was beginning its buying spree) and June 2021, CEL's price increased by 14,751%.

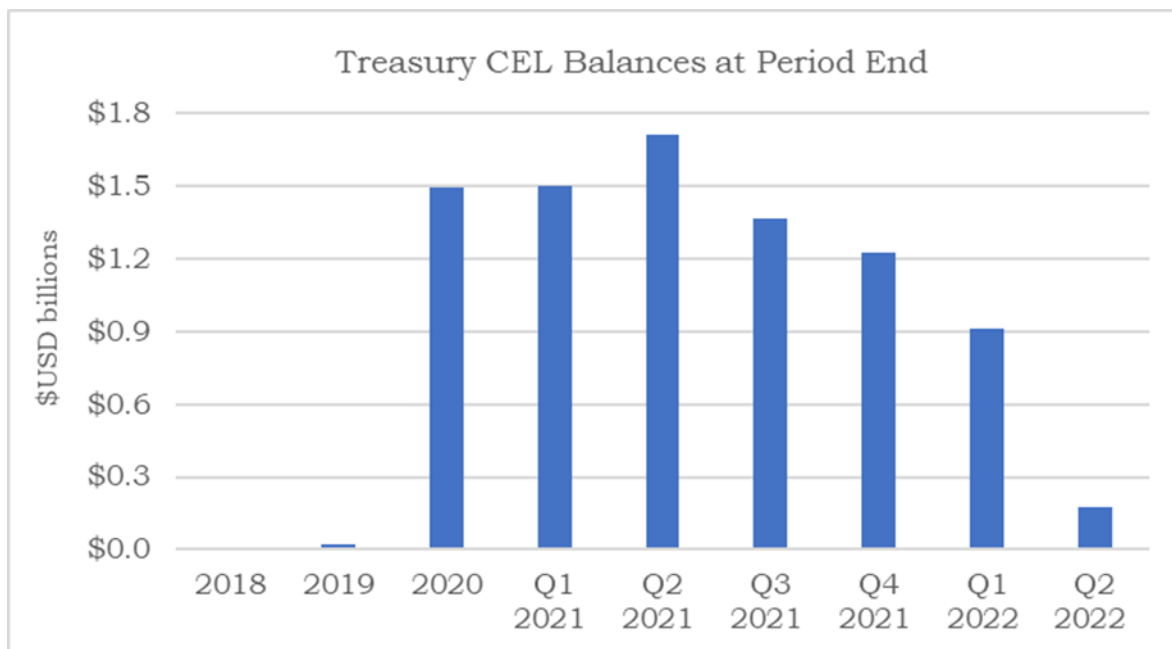
Although Celsius told customers that it would purchase CEL to pay customer rewards, it did not tell its customers the extent to which it was making the market for CEL. Instead, in one of his AMAs, Mr. Mashinsky told customers that the "over 2,000 percent increase this last year" in CEL's price was "a great validation of the utility of [CEL] as well as the flywheel running on its own instead of us having to crank it up once in a while." But internally, Celsius's Head of Trading Desk recognized that Celsius was in fact cranking up the flywheel. He wrote to other employees, including Celsius's then-Chief Financial Officer: "Just to clarify between us three: The last 3-4 months we bought always more CEL than what we pay as interest per week but we did not buy it for the interest payments, that is just what we told the community." After a round of CEL purchases in September 2020, the same Celsius employees congratulated themselves on "our good work" resulting in "people thinking [the price of CEL] is going to the moon haha."

The increasing price of CEL had three significant consequences for Celsius and its insiders. First, it significantly inflated Celsius's balance sheet. Celsius accounted for CEL in two buckets: (i) Treasury CEL consisting of the CEL Celsius minted at the time of the ICO but did not offer for sale; and (ii) Non-Treasury CEL consisting of the CEL that Celsius bought on the market for itself and its

customers. In February 2019, Celsius added its Treasury CEL to its balance sheet at then-market prices resulting in an increase in reported assets of \$6.6 million. By December 30, 2021, Celsius reported that the market value of its Treasury CEL was \$1.5 billion.

The following chart illustrates how the increasing market price for CEL improved Celsius's balance sheet and what happened as Celsius could no longer afford to prop up CEL's price in the run-up to its bankruptcy filing.

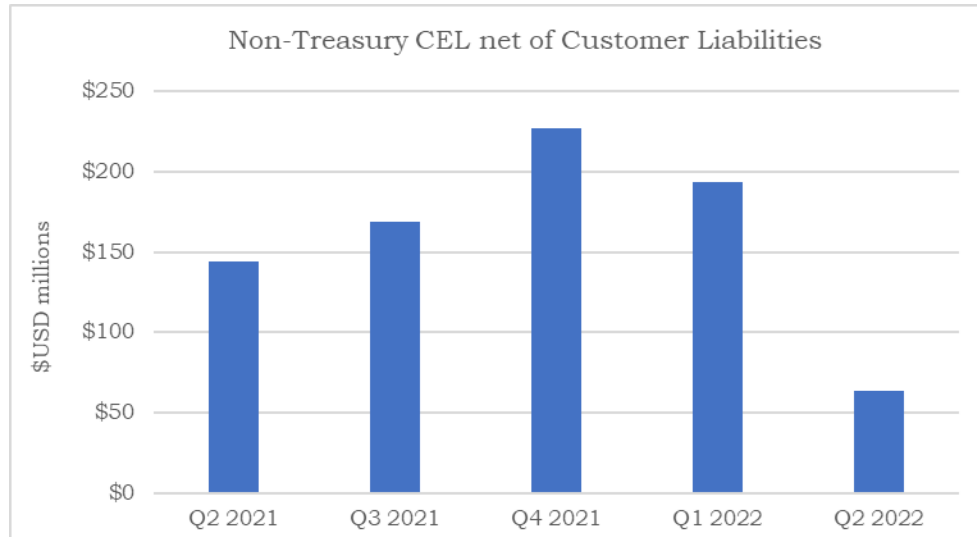
TREASURY CEL BOOK VALUES



Note: This chart depicts the Treasury CEL values reflected on Celsius's books and records from 2018 until the second quarter of 2022.

Including the Non-Treasury CEL on its balance sheet at its market price also improved Celsius's balance sheet, as demonstrated in the following chart:

NON-TREASURY CEL BOOK VALUES



Note: This chart summarizes the non-Treasury CEL values (excluding CEL held to meet customer obligations) reflected on Celsius's books and records from the second quarter of 2021 until the second quarter of 2022.

Despite the values reflected on its balance sheet, CEL had limited utility, including because there was no market to deploy CEL outside of Celsius's platform. In 2022, Celsius employees routinely discussed that CEL was "worthless," stating that its price "should be 0," and that Celsius should "assume CEL is \$0 since we cannot liquidate our current CEL position," and questioning whether any party (other than Celsius itself) was purchasing CEL.

Second, the increasing price of CEL benefited Celsius's insiders who held most of the CEL following the ICO and then made millions of dollars selling a substantial portion of their CEL tokens. Between 2018 and the Petition Date, Mr. Mashinsky sold at least 25 million CEL tokens, realizing at least \$68.7 million on these sales. S. Daniel Leon, also a founder of Celsius, sold at least 2.6 million CEL tokens for at least \$9.74 million.

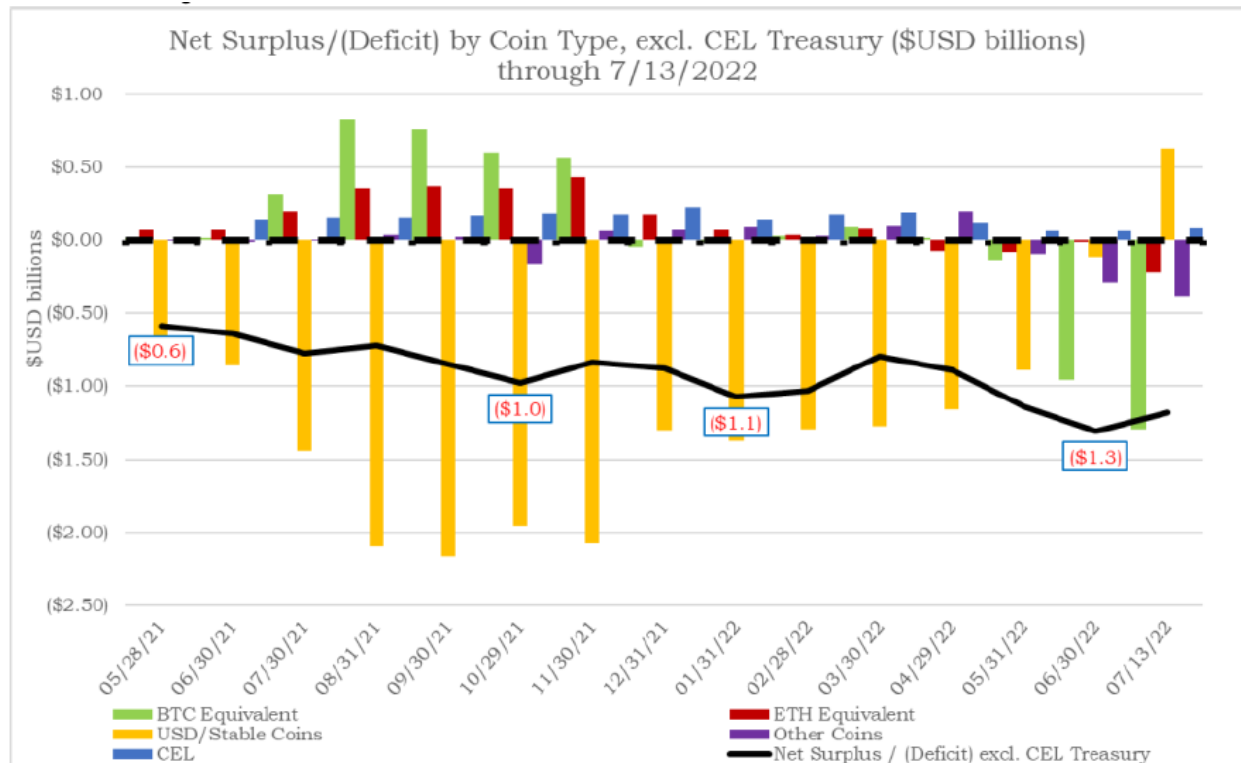
During the height of Celsius's market making, Celsius often sought to protect CEL from price drops that it attributed to Mr. Mashinsky's sales of large amounts of his personal CEL holdings. As a result of Mr. Mashinsky's sales, Celsius often increased the size of its resting orders to buy all of the CEL that Mr. Mashinsky and his other companies were selling. These trades caused Celsius's former Chief Financial Officer to write "[w]e are talking about becoming a regulated entity and we are doing something possibly illegal and definitely not compliant." As one employee noted in an internal Slack communication: "if anyone ever found out our position and how much our founders took in USD could be a very very bad look . . . We are using users USDC to pay for employees worthless CEL . . . All because the company is the one inflating the price to get the valuations to be able to sell back to the company."

Finally, Celsius did not earn sufficient yield on its crypto asset deployments to fully fund its CEL buybacks. As a result, it began using customer-deposited Bitcoin (BTC) and Ether (ETH) to fund its CEL purchases. But because Celsius lacked adequate reporting systems to track and reconcile customer assets on a coin-by-coin basis, Celsius was unable to track when it was short the necessary coins to meet customer obligations. Celsius was therefore caught off guard in early 2021 when it discovered a shortfall in BTC and ETH (which it had been using to fund CEL buybacks). Because the prices of BTC and ETH were increasing at that time, the amount of dollars it cost Celsius to acquire the necessary number of BTC and ETH also increased. Celsius

scrambled to correct the shortfall by using stablecoins to buy or borrow the number of BTC and ETH it needed.

Correcting the shortfall in BTC and ETH cost Celsius approximately \$300 million, which it paid in stablecoins. Celsius used customer deposits to acquire those stablecoins. As a result, Celsius was left with a hole in its balance sheet of stablecoins rather than BTC and ETH. That hole continued to grow as a result of Celsius's continued buybacks of CEL and the significant losses Celsius suffered on some of its deployments in 2021. Celsius's stablecoin deficit between May 28, 2021 and Celsius's bankruptcy filing is depicted in the below chart and amounted to a billion-dollar hole in Celsius's assets. As the chart also demonstrates, as customers began withdrawing BTC and ETH from Celsius in May and June 2022, Celsius had to unwind its borrowings to recover the BTC and ETH it had pledged. As a result, its stablecoin deficit was replaced with a deficit in BTC and ETH.

NET COIN SURPLUS/(DEFICIT) MAY 2021 TO PETITION DATE



Note: This chart reflects the net surplus or deficit in all coins (total AUM) categorized by coin type, from May 2021 through the Petition Date.

Celsius recognized that it should not use customer assets to purchase the coins necessary to cover liabilities to other customers. But it justified its use of customer deposits to fill this hole in its balance sheet on the basis that it was not selling customer deposits but instead posting them as collateral to borrow the necessary coins. Celsius also used the proceeds of these borrowings to continue to purchase CEL. In April 2022, Celsius’s Coin Deployment Specialist described Celsius’s practice of “using customer stable coins” and “growing short in customer coins” to buy CEL as “very ponzi like.” A few weeks later when Celsius made another push to prop up the price of CEL, Celsius’s former Vice President of Treasury asked where the cash was coming from to make the CEL

purchases and Celsius's Coin Deployment Specialist replied, "users like always." This same employee explained that at the time he made this statement, Celsius had "negative equity" and therefore necessarily was using customer funds when it made these purchases.

In addition to using customer deposits, Celsius also turned to the funds it was raising from outside investors to buy CEL. Internally, Celsius's managers expressed concern that Celsius was using "equity money [to buy CEL] that should be strategically used to grow the company." When the Examiner asked Celsius's former Vice President of Treasury why Celsius bought CEL to pay rewards rather than using the CEL it held in Treasury, he acknowledged that the answer lies in who holds the most CEL. Another manager put it more bluntly: "we spent all our cash paying execs and trying to prop up alexs [sic] net worth in CEL token."

In total, Celsius spent at least \$558 million buying its own token on the market. From 2018 through the Petition Date, Celsius transferred at least 223 million CEL from the secondary market to its own wallets, a greater number than the total amount of CEL (203 million) released to the public in the ICO. In effect, Celsius bought every CEL token in the market at least one time and in some instances, twice.

But once Celsius acquired this CEL, it had no ability to deploy its CEL outside of its own platform. In fact, Celsius never liquidated any of its CEL to address its liquidity needs, even as it scrambled to find liquid assets in the run up to June 12, 2022, the date on which it paused all customer withdrawals.

Today, Celsius holds essentially the same amount of CEL as it did on January 1, 2022 (an amount which constitutes approximately 95% of all CEL in existence).

Reward Rates.

What Celsius told its customers about its reward rates also did not match what Celsius actually did. Celsius did not distribute up to 80% of its revenues to its customers because it had little to no profits to distribute. Celsius also made no effort to set its reward rates based on its yield. When regulators asked Celsius how it set its reward rates, Celsius explained that there was no correlation between the interest rates it paid to customers and the yield it generated from investing customer assets. Despite leading customers to believe that it had a defined reward rate setting policy that allowed it to distribute up to 80% of its revenues to customers, Celsius had no reward policy until July 2021. And the policy it adopted at that time did not correlate reward rates to yield.

Importantly, if Celsius had set its reward rates based on its revenues or profits, those rates would have been substantially lower than what Celsius paid. Instead, Celsius consistently set its reward rates based on what it perceived was necessary to beat the competition and not based upon the yield it was earning from investing customer assets. While this strategy of offering high rates suggested to customers that Celsius was generating the high yield on investments that it advertised, the reality was that for most of Celsius's existence, the rewards it paid exceeded by substantial amounts the revenues Celsius could earn.

Some in Celsius's management sounded alarm bells over this practice and attempted to lower reward rates. Mr. Mashinsky, who prioritized growth in Celsius's customer base over profitability, however, overrode their recommendations and refused to do so. The result was that between 2018 and June 30, 2022, Celsius accrued reward obligations to customers of \$1.36 billion more than the net revenue it generated from customer deposits.

The disparity between Celsius's yield on customer assets and the rewards it paid to customers was a significant reason why Celsius's net interest margin (referred to as "NIM"), a key indicator of a financial institution's health, was generally negative. As it did with other financial metrics (such as its profit margin for its mining business) Celsius calculated its NIM aggressively, by comparing the yield on its assets to their cost, instead of using the conventional (and more conservative) method of comparing the yield on assets to liabilities. Internally Celsius's managers understood this had the effect of overstating Celsius's NIM, but even as overstated, Celsius's NIM demonstrated that Celsius was never a profitable company. As one of Celsius's former Chief Financial Officers put it: while NIM can vary (and even at points be negative), "over time it should be around 3% as otherwise there is no business." For much of its existence, Celsius's NIM was either negligible or negative and was never close to 3% .

Risky Investments.

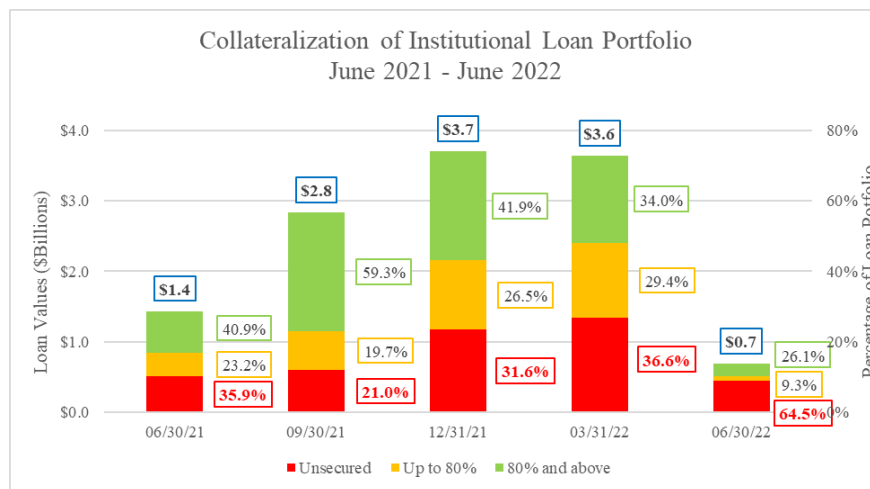
Mr. Mashinsky's insistence that Celsius maintain its high reward rates, often over the objection of other managers, led Celsius to turn to riskier investments to increase its yield. Initially, Celsius deployed its customer assets

as it advertised it would—by loaning crypto assets to institutions in the form of fully collateralized loans or allowing customers to use their crypto assets as collateral for loans Celsius made to those customers. But as Celsius’s customer base grew exponentially in the crypto market boom of 2020 and 2021, the need to increase yield to close the gap between customer reward rates and revenue led Celsius to make riskier investments. Celsius made loans that were not fully secured or were unsecured so that it could charge higher interest rates; it placed crypto assets into DeFi and staking protocols; it purchased a DeFi company, KeyFi, Inc. (a purchase that failed within months and now is in litigation); it allocated crypto assets to exchanges; and it invested approximately \$604 million in the form of an intercompany loan to start a BTC mining operation.

Despite these material changes to its investment strategies, Celsius continued to promote the idea that it was investing customer funds in low-risk and fully collateralized institutional and retail loans. In 2021, Mr. Mashinsky told the Financial Times that “[f]rom a risk standpoint, we are probably one of the least risky businesses that regulators worldwide have ever seen.” Mr. Mashinsky continued to tell customers that “we only do asset back lending so always have 200% collateral.” In another AMA, he told customers “Celsius is very, very strict who we lend to . . . We do not do unsecured lending.” After he made this statement, Celsius’s then Chief Financial Officer wrote to Celsius’s then Head of the Trading Desk: “I just told [Mr. Mashinsky] that the number [of unsecured loans] is increasing and the overall ratio of collateral with institutions is going down.” The Chief Investment Officer responded that Mr. Mashinsky’s

statements were “dangerous” because the borrowers with unsecured loans could tell everyone Mr. Mashinsky is a “liar.”

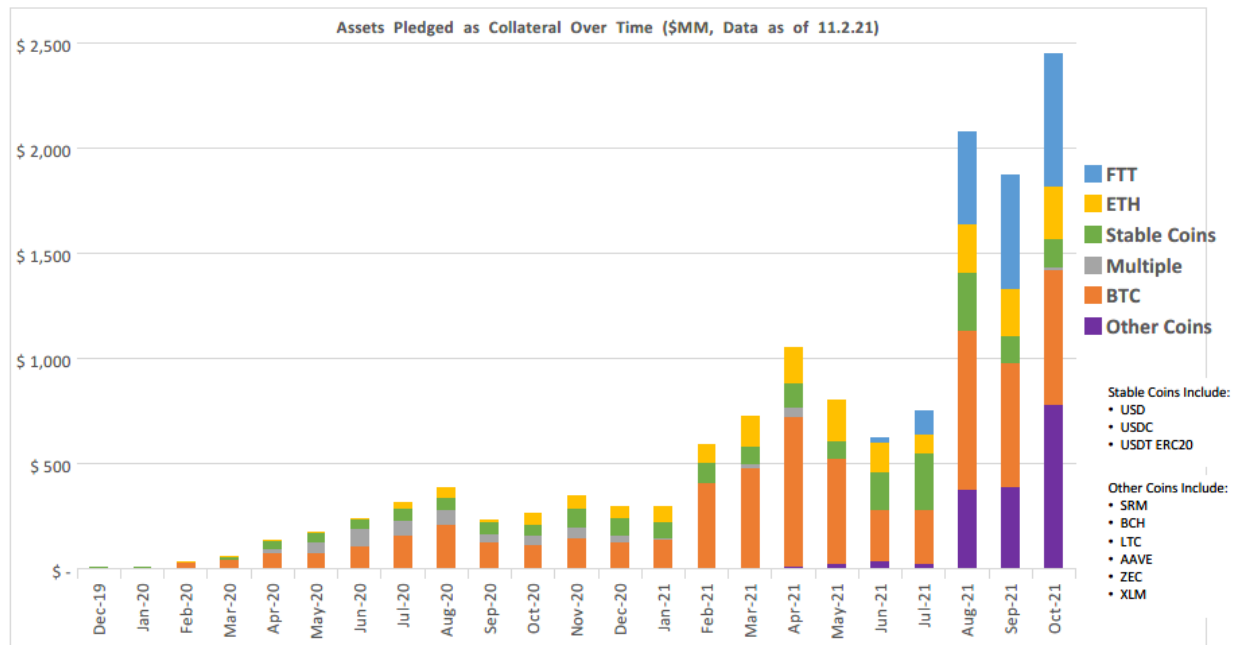
Celsius’s records demonstrate just how far off the mark Mr. Mashinsky’s representations were. In December 2020, approximately 14% of Celsius’s institutional loans were wholly unsecured. By June 2021, it was routine for one-third of Celsius’s institutional loan portfolio to be wholly unsecured and more than half of the portfolio to be under-collateralized, as demonstrated in the following chart:



Although the above chart appears to indicate that in the Fall of 2021, fully collateralized loans increased, that is misleading because the collateral Celsius accepted did not provide real security. During that time period, Celsius accepted FTX’s native token, FTT, as collateral from FTX, despite knowing that the price of FTT was largely dependent on FTX, and thus failed to provide meaningful security against a default by FTX (the same sort of correlated risk that led lenders not to accept CEL as collateral from Celsius).

The below chart breaks down by asset type the collateral Celsius held over time:

ASSETS PLEDGED AS COLLATERAL (12/19 – 10/21)



Note: This chart presented to Celsius’s Risk Committee describes Celsius’s deployment of coins as collateral for loans over time.

In addition to making riskier loans, in 2021, Celsius recognized losses of over \$800 million primarily as a result of investments with Equities First Holdings, LLC, Grayscale, KeyFi, Inc., and Stakehound. Celsius did not report these losses to its customers at the time they were incurred. None of these investments were the fully collateralized institutional loans that Celsius told its customers it was making with their crypto assets.

Risk Management.

Although Celsius sold its customers on its ability to manage risk—claiming that risk management was “what Celsius does best”—Celsius did not have a risk

management function or written risk policies in place before 2021. In 2021, in response to the significant losses it had suffered, Celsius hired its first risk management team—four individuals who had previously held risk compliance positions with traditional financial institutions. This new team began to institute what were described as “stop-gap” measures to allow time to implement more robust procedures in 2022.

A key priority for this new team was developing an internal audit procedure to ensure risk policies were being followed—a critical component of a robust risk management policy. Although Celsius hired an individual for this audit role in August 2021, Celsius’s executive team delayed his proposals to implement a formal internal audit process. As a result, Celsius never fully implemented a robust risk management policy before it filed for bankruptcy.

Celsius also lacked the ability to accurately track and report on its assets and liabilities, a problem that became more acute as Celsius engaged in riskier deployments. To correct for these problems, Celsius developed two internal reports—the Freeze and Waterfall Reports. But Celsius did not devote the necessary resources to fully develop its Freeze Report, viewing it as a “band-aid” until a better reporting system could be devised. In addition, Celsius employees believed that the Waterfall Report overstated its profitability. An internal Celsius document listing Celsius’s challenges noted that Celsius had “[a]bsolutely pathetic systems of records” and as a result, Celsius did “not do a good job of knowing anything about how our assets are actually performing. Our systems are horrible, and . . . can cause us to take on excessive risk.” Further, Celsius

managers knew that these reports incorrectly calculated NIM and therefore presented an inaccurate and overly optimistic view of Celsius's financial performance.

Both reports also did not precisely track Celsius's assets and liabilities and were only "directional" estimates of Celsius's assets and liabilities. As a result, when Celsius attempted to execute more sophisticated trading strategies in 2021 and 2022 to increase its yield, it lacked the real-time information about its positions necessary to successfully execute these trades and lost over \$150 million. When Celsius's new Chief Risk Officer reviewed these losses, he expressed concern over the fact that Celsius was engaged in this type of trading because Celsius "had conveyed to the public that we take coins and lend them out."

Key Contract Terms.

Celsius's Terms of Use, which customers accepted by clicking their agreement when opening a Celsius account, also conflicted with what Celsius told its customers. In its marketing materials and AMAs, Celsius and its managers told customers that the crypto assets they deposited with Celsius were "your assets" and that the coins belonged to the customers. But Celsius's Terms of Use stated from March 2020 forward that a customer transferred all "rights of ownership" in her crypto assets by depositing them in a Celsius account. Similarly, Mr. Mashinsky told customers that in the event of a bankruptcy they would get their coins back, while the Terms of Use told customers (starting in

March 2020) that in the event of bankruptcy they may not be able “to recover or regain ownership” of their crypto assets.

Celsius’s Efforts To Erase Its Misrepresentations.

Internally, Celsius managers recognized that many of the statements that Mr. Mashinsky made during AMAs and in his tweets, particularly about how Celsius was deploying customer assets, were not true. Starting in May 2021 Celsius’s Chief Risk Officer raised the prospect of editing the AMAs after the fact and before posting them to YouTube to eliminate any misleading statements. Mr. Mashinsky resisted that suggestion fearing that any delay would create “FUD” (Fear, Uncertainty, and Doubt) in the community. The AMA that prompted this initial concern continues to be available on the internet.

Throughout 2021 and up through the bankruptcy filing, Celsius continued to identify incorrect statements Mr. Mashinsky made during the AMAs. Lists containing these misstatements were circulated internally. In some instances, Celsius was able to edit the AMAs after posting; in other instances, it was not. But what Celsius and Mr. Mashinsky never did was correct the record after the fact for the thousands of live audience members who heard these misstatements or for those who watched the recorded videos on YouTube before they were edited. Instead, in some instances, internal documents suggest that Celsius employees hoped viewers would not notice the discrepancies that had been edited from the videos.

* * *

In every key respect—from how Celsius described its contract with its customers to the risks it took with their crypto assets—how Celsius ran its business differed significantly from what Celsius told its customers. The Examiner interviewed and communicated with a number of Celsius’s customers, many of whom stated that Celsius’s misstatements about how it would handle their crypto assets led them to invest significant crypto assets with Celsius that they would not have invested if they had understood the level of risk Celsius was taking or that many of the things Celsius presented in its AMAs, tweets, and other marketing materials were not true.

Celsius’s Collapse.

In the run-up to the June 12, 2022 pause on customer withdrawals and Celsius’s July 12, 2022 bankruptcy filing, Celsius’s problems came to a head. During a bull market, in 2021, Celsius still recorded a pre-tax loss of \$811 million. As the markets began to fall in 2022, Celsius continued to lose money, reporting a first quarter loss of \$165 million. The bear market also made it more difficult to close the gap between Celsius’s reward rates and the yield it could earn on its customers’ assets and fill the hole in its balance sheet as a result of its CEL buybacks and other losses. In January 2022, for example, nearly every opportunity Celsius had to deploy its BTC was below its cost of funding, contributing to an overall continuing firmwide negative NIM.

As a result, Celsius’s Treasury department began pushing Mr. Mashinsky to change the way Celsius set its reward rates so that those rates did not exceed

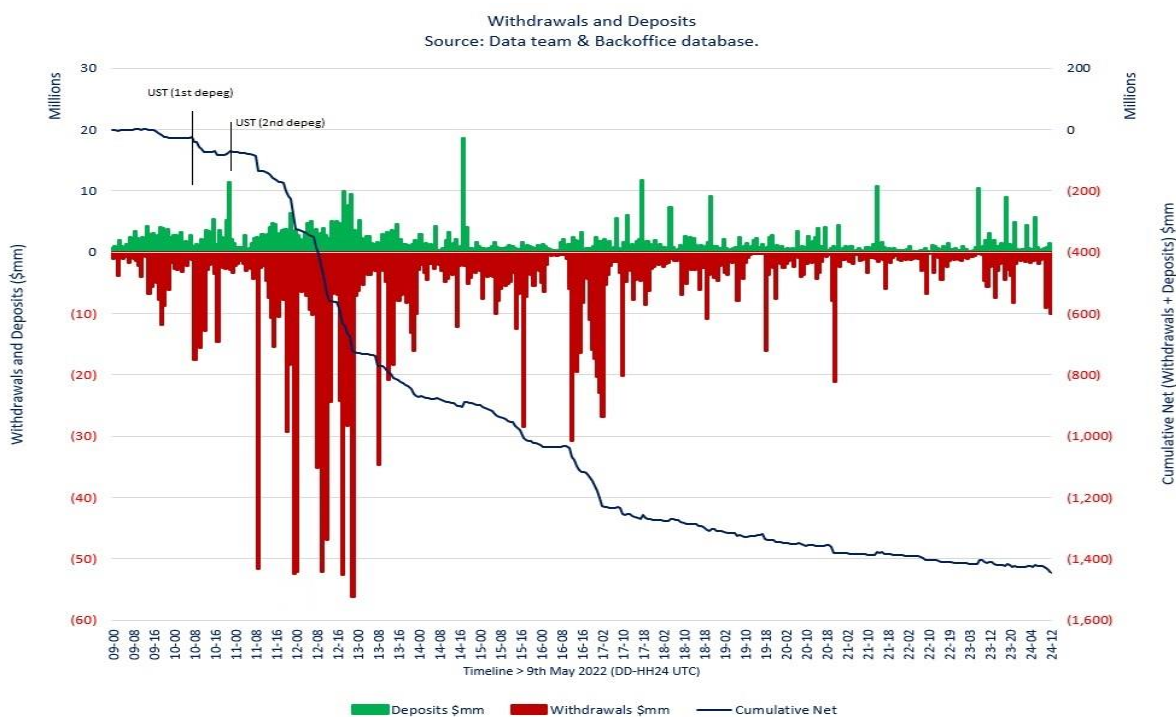
Celsius's yield. Mr. Mashinsky continued to resist because of his belief that "all of our customers will leave us" if rates were cut. In particular, Mr. Mashinsky refused to reduce the reward rates for CEL or to suspend the ability of customers to collateralize their loans with CEL. When Celsius's new Chief Financial Officer pressed these issues, Mr. Mashinsky told him to "tell your team to stay in their lane" and that he did not need help with marketing, as he would "bring in a few billion just like I brought in the first 20B."

Instead of lowering the reward rate for CEL, Mr. Mashinsky did the opposite. He instituted a policy that allowed any user that held 1 CEL to earn a 10% bonus on their in-CEL earnings. Celsius's customers quickly took advantage of this new offer. Because Celsius did not charge for swaps, customers began to arbitrage, taking their higher CEL rewards and then swapping that CEL for other coins.

As Celsius struggled with its reward rates, it also began experiencing a severe and rapid reduction in its liquidity. By early May 2022, Celsius's capital was "near zero." And Celsius's employees were openly speculating about its ability to survive. Between May 7 and May 9, 2022, as the price of the Terra stablecoin (UST) dropped, Celsius scrambled to reduce its exposure, escaping with a \$30 million loss. By May 11, 2022, Celsius had failed its own Modeled Liquidity Outflow (or "MLO") test. Celsius developed the MLO test to determine how much of each type of coin it would need to hold to meet anticipated withdrawals if prices dropped significantly over one day or over one week. When

the tests began to fail, however, Celsius relaxed the test instead of prohibiting further deployments as its Liquidity Risk Policy required.

Between May 9 and May 24, 2022, Celsius began to experience significant customer withdrawals—a net loss of over \$1.4 billion in assets:



On May 12, 2022, the price of CEL had fallen to \$0.57, causing one employee to comment CEL was “legit being wiped out.” Celsius propped up the market that day, leading to a temporary increase in the price to \$0.90, which its former Vice President of Treasury took as “proof we are the only buyers.” Later on May 12, Mr. Mashinsky directed the purchase of \$5 million of CEL, but Celsius only had \$1.6 million of stablecoin and could not make the purchase, marking the end of Celsius’s sustained efforts to support CEL’s price. By June 12, 2022, the price of CEL had fallen to \$0.28.

By May 27, 2022, Celsius only had sufficient liquidity to meet 30% of its BTC obligations and 21% of its ETH obligations to customers. Celsius also had triggered the modified stress test introduced only three weeks earlier. The percentage of Celsius's assets that constituted "Deployable Liquidity" (*i.e.*, assets Celsius could access within seven days) went from approximately 49% in February to under 33% by the end of May and under 24% by the Pause. In other words, a substantial majority of Celsius's assets were essentially unavailable to meet withdrawal requests.

Throughout May 2022, as Celsius's employees openly expressed the view that Celsius was a "sinking ship" without a plan, Mr. Mashinsky continued to assure customers that all was well at Celsius. On May 11, 2022, both Celsius and Mr. Mashinsky posted on Twitter that "All user funds are safe." That same day, Mr. Mashinsky posted that "Celsius has not experienced any significant losses and all funds are safe." At the beginning of the May 13, 2022 AMA, he stated "Celsius is stronger than ever."

Celsius also continued to focus on growth, attempting to attract additional deposits by offering promo codes and reassurances about its liquidity. In a May 27, 2022 AMA, Celsius offered rewards for referring friends to Celsius. On May 29, 2022, Mr. Mashinsky offered to pay \$1,000 to one new Celsius customer that week.

In early June 2022, Mr. Mashinsky continued to publicly represent that customers' crypto assets were safe at Celsius. He pushed promo and referral codes to attract new customers. But on June 5, 2022, a report appeared that

Stakehound lost the keys to 35,000 of Celsius's ETH one year earlier in May 2021—a loss that Celsius had not previously made public. In response to those reports, between June 7 and 10, 2022, Celsius published a series of blog posts and continued to livestream AMAs in which it continued to emphasize its core themes of transparency and liquidity. Mr. Mashinsky told a June 10 AMA audience that Celsius had “billions” in liquidity. Behind the scenes, on June 9, 2022, the Risk Committee reported that additional withdrawals would deplete Celsius's liquidity.

By June 12, 2022, Celsius was forced to pause all withdrawals. One month later, on July 12, 2022, Celsius filed its chapter 11 petition. Celsius's former Vice President of Treasury summed up Celsius's problems as follows: “Pay unsustainable yields so you can grow AUM [assets under management], forcing you to take on more risk, experience losses bc of those risks + bad controls / judgment and you are where you are.”

Celsius's Use Of New Customer Assets To Fund Withdrawals.

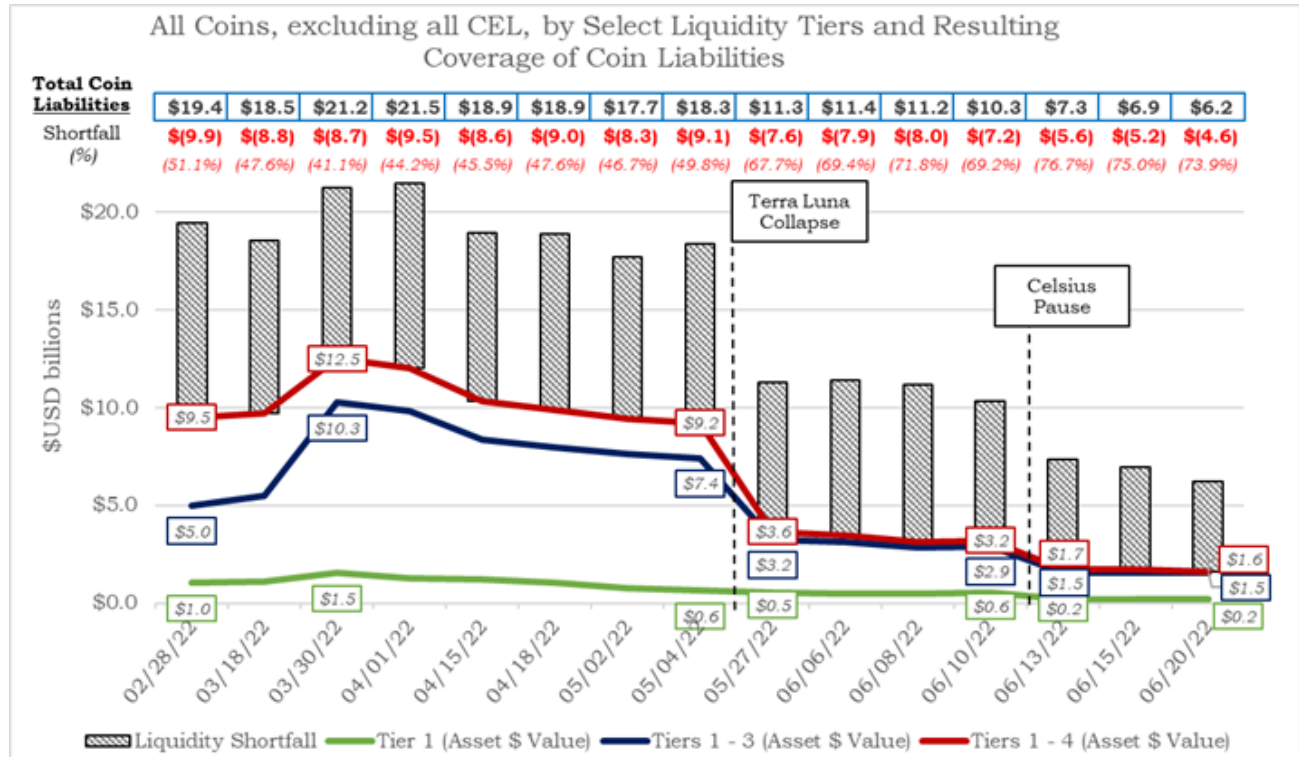
The Court directed the Examiner to investigate “whether the Debtors used new deposits being made by customers to make payments or otherwise meet obligations to existing customers at a time when the Debtors had no other sources (whether liquid or which could have been monetized) from which to make such payments or meet such obligations.”

To address this question, the Examiner assessed Celsius's liquidity in the time period leading up to the pause of customer withdrawals. Celsius ranked its assets based on their ability to be liquidated within certain time frames. Assets

ranked in Tier 1 were capable of being liquidated immediately and assets ranked in Tiers 5 and 6 were considered illiquid because only a small percentage of deployments in these tiers could be unwound. Assets in Tiers 2, 3, and 4 were capable of being liquidated in one day, two to three days, and four to seven days respectively.

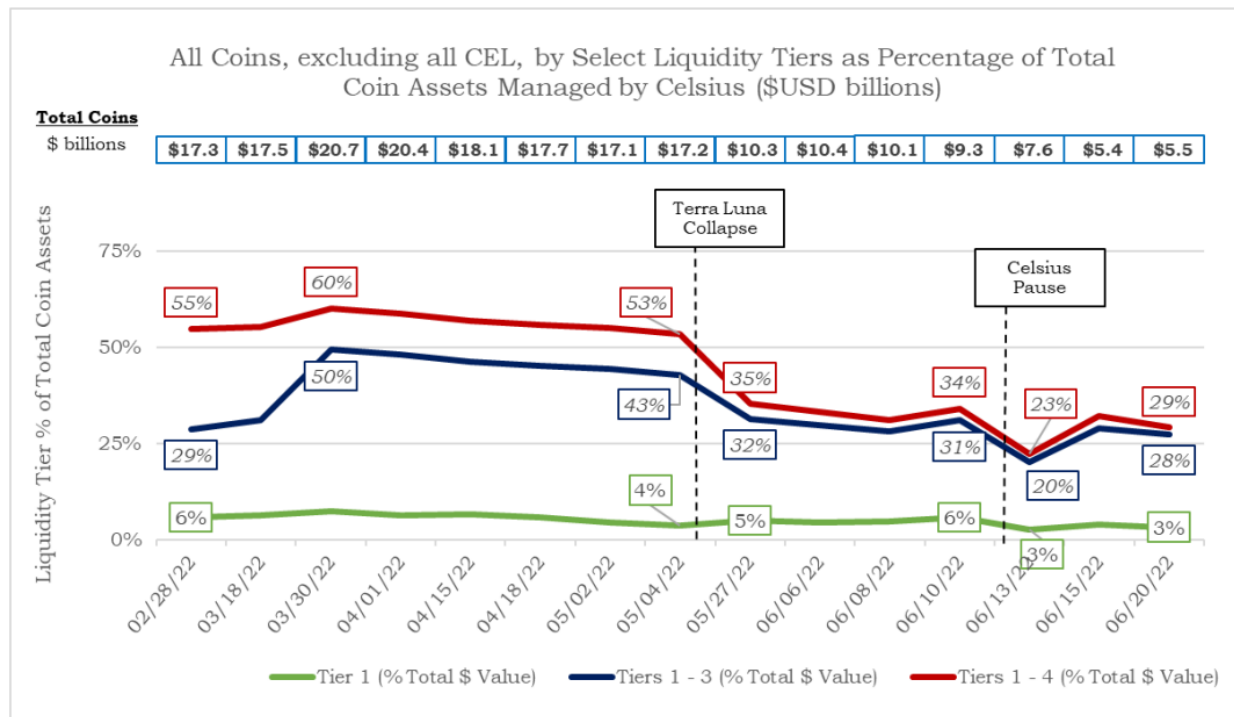
The Examiner reviewed all coin types and then for each coin category, the percentage of assets within each tier, as categorized by Celsius, and included all assets under management. The charts below depict the liquidity shortfall in respective tiers over all coins between February 28 and June 20, 2022.

ALL COIN LIQUIDITY (\$)



Note: This chart reflects all coins comprising Celsius AUM (excluding CEL and custody assets) measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

ALL COIN LIQUIDITY (%)



Note: This chart reflects all coins comprising Celsius AUM (excluding CEL and custody assets) measured as a percentage of all coins in AUM, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

As these charts demonstrate, due in part to the billion-dollar hole in its balance sheet, Celsius lacked liquidity to cover anticipated future withdrawals, and its remaining liquid assets were being quickly depleted. If Celsius had not instituted the Pause and the run on the bank continued, new customer deposits inevitably would have become the only liquid source of coins for Celsius to fund withdrawals.

But as of the Pause, Celsius appeared to satisfy the withdrawal requests from the commingled pool of crypto assets under management. In some instances, however, between June 9 and June 12, Celsius did directly use new customer deposits to fund customer withdrawal requests. The detail regarding

these transactions is set forth in the Report. The Examiner's identification of the instances where Celsius directly used new customer deposits to fund customer withdrawals is not a comprehensive or exhaustive list of all transactions for all time periods.

Celsius Mining's Utility Obligations.

The Examiner also was tasked with investigating the "current status of the utility obligations of Celsius's Bitcoin mining business." Celsius Mining LLC ("Celsius Mining") conducts its Bitcoin mining at sites operated by third-party hosts and at sites it owns and operates. The fees it pays its third-party mining hosts include utility charges. Celsius Mining pays utilities directly for the sites it owns and operates.

Celsius Mining's unpaid utility-related bills total \$13,982,152. Of this amount, \$8,381,830 consists of post-petition amounts owed to one of its mining hosts that are disputed. The remaining balance of \$5,600,322 consists of pre-petition invoices that are either disputed or that were not paid due to the bankruptcy filing. Celsius Mining's mining hosts, however, also hold prepayment balances totaling \$46,809,756, which may be available to offset Celsius Mining's obligations.

Celsius's Use, Value Added, And Sale Tax Obligations.

The Examiner's investigation into Celsius's "procedures for paying sales taxes, use taxes and value added taxes" uncovered significant tax compliance deficiencies. Celsius did not employ any dedicated tax professionals for the first three years of its existence. Once Celsius established a tax department in June

2021, its professionals failed to institute the necessary systems and procedures to ensure that its operating subsidiaries complied with their use tax and value added tax (“VAT”) obligations on a timely basis. The result is that Celsius Mining owed \$16.5 million in use taxes as of the Petition Date and may owe \$6.6 million in use taxes after the Petition Date. In addition, Celsius Network Limited (“Celsius Network (UK)”), a United Kingdom private limited company, which until August 2021 operated Celsius’s customer-facing network business, has reserved \$3.7 million for its potential VAT liability.

Celsius Mining incurs significant use tax liabilities, primarily when deploying mining rigs in the United States that it purchased from foreign vendors that do not collect sales tax as part of the transactions and when there is no available tax exemption or exclusion. When Celsius Mining deploys those mining rigs (*i.e.*, starts operating the mining rigs), it must pay use tax to the jurisdiction in which the mining rigs will be operated. Celsius Mining also has the potential to incur additional use tax when it moves mining rigs from one jurisdiction to another.

With respect to use taxes, the Examiner’s investigation revealed that Celsius and Celsius Mining lacked adequate systems and procedures to track and to timely pay use taxes when due. These failures, however, did not create use tax compliance failures until 2022. Prior to 2022, Celsius Mining’s use tax obligations were satisfied by either paying sales tax to its United States vendors when no exemptions or exclusions were available or relying on its data center host, Core Scientific, Inc., to identify and obtain the appropriate exemptions.

That changed in 2022 when Celsius Mining began purchasing mining rigs from foreign vendors that did not collect sales taxes, triggering the obligation to pay use taxes. Although contemporaneous emails and other documents demonstrate that questions were raised at the end of 2021 and throughout the spring of 2022 about the need to address use tax issues with respect to the foreign-sourced mining rigs that were expected to be deployed in 2022, no one in Celsius's tax department took responsibility for ensuring that Celsius Mining was addressing its use tax obligations. As a result, neither Celsius Mining nor Celsius's tax department applied for relevant use tax exemptions in Pennsylvania and Georgia—the two states in which Celsius Mining deployed foreign-purchased mining rigs before the bankruptcy filing. Lior Koren, Celsius's most senior tax professional, told the Examiner that it was "unknown to [him]" how or why Celsius Mining did not apply for use tax exemptions on a timely basis. Celsius's tax professionals are attempting to mitigate the consequences of this failure, but if those efforts are unsuccessful, Celsius Mining will owe substantial pre-petition use taxes.

Celsius Mining's lack of coordination with Celsius's tax department continued even after June 2022, when Mr. Morgan told the Examiner he first believed he had responsibility for ensuring Celsius Mining's compliance with its use tax obligations. After the filing of the bankruptcy cases, Celsius Mining deployed foreign-sourced mining rigs in Texas, triggering an estimated \$6.6 million in use tax liabilities. Celsius's tax professionals are now working after the fact to address this liability, which has not been paid.

With respect to Celsius Network (UK)'s VAT liability, in 2021, Celsius engaged Mazars to advise on its VAT obligations. Celsius Network (UK) did not receive its first letter from Mazars about its obligation to register with the United Kingdom's tax authority, HM Revenue & Customs ("HMRC") and pay VAT until January 14, 2022—two years after it first met the threshold to register with HMRC and pay VAT. Celsius explains this delay by pointing to the fact that its first tax professional was not on board until June 2021.

Based on Mazar's advice, Celsius Network (UK) believes that it was not required to register with the United Kingdom's applicable taxing authority until January 2020 and that Celsius Network (UK) owes approximately \$1.085 million in VAT for its business activities between January 1, 2020 and July 31, 2021. Celsius Network (UK) is now working with Mazars to complete its registration, and it intends to file a VAT return and seek mitigation of any late penalties associated with the VAT it owes. Celsius Network (UK) has obtained professional advice that its activities no longer trigger VAT obligations because it transferred its customer-facing business to a U.S. entity in August 2021.

III. Investigative Steps.

The Examiner's Final Report is the culmination of her review of voluminous data and records, as well as information gathered during interviews of current and former Celsius employees, customers, and vendors. The Examiner also met with numerous interested parties, including representatives of Celsius, the Unsecured Creditors' Committee, state and federal regulatory agencies, and the *ad hoc* committees from whom she gathered relevant information.

A. Huron Consulting Group.

On October 10, 2022, the Examiner engaged Huron Consulting Group to serve as her financial advisor. Huron reviewed Celsius's financial records—including accounting records provided by Celsius and information and data provided by Celsius's current crypto asset wallet manager, Fireblocks—to assess Celsius's financial activity, crypto assets, and mining business. Huron also reviewed publicly sourced information, including transactions recorded on various blockchains (*e.g.*, Bitcoin, Ethereum, and Polygon). Using a combination of Celsius's internal records and public information, Huron identified how Celsius held, deployed, moved, and stored crypto assets.

B. Witness Interviews.

Counsel for the Examiner interviewed 34 individuals for purposes of this Final Report, including 26 current and former Celsius employees working in Risk, Compliance, Operations, Marketing, Business Processes/Controls, Finance, Tax, Treasury, and Strategy, among other areas.¹⁴ The Examiner interviewed former Chief Executive Officer Alex Mashinsky for approximately seven hours. Counsel for the Unsecured Creditors' Committee was present for and had the opportunity to ask questions of some witnesses. The Examiner also interviewed seven Celsius customers, representatives from two of Celsius's vendors, and several third parties. A number of former employees and Celsius

¹⁴ This Report includes quotes from contemporaneous interview notes. Although every effort was made to be accurate, these notes are not official verbatim transcripts.

customers and vendors declined or did not respond to requests to be interviewed or to provide information or documents.

As discussed in the next Section, Celsius caused delays in scheduling the interviews of key witnesses and imposed numerous limitations on those interviews. For example, Celsius required that the Examiner preview her interview topics, limited many interviews to two hours, and, for many key witnesses, produced relevant documents and information after the interviews concluded.

C. Cooperation By Celsius.

In its September 29, 2022 Examiner Order, the Court ordered Celsius to, fully cooperate with the Examiner in the performance of any of the Examiner's duties and the [Examiner's] Investigation. The Debtors and the Committee shall use their respective reasonable best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation.¹⁵

In addition, the Court ordered Celsius to provide to the Examiner "all non-privileged documents and information within their possession that the Examiner reasonably deems relevant to perform the investigation."¹⁶

During the Examiner's investigation, Celsius, through its counsel Kirkland & Ellis and financial advisors Alvarez & Marsal Consulting, provided the Examiner with approximately 500 gigabytes of data and records (including approximately 231,000 documents). Celsius withheld over 6,700 additional

¹⁵ Examiner Order at ¶ 4.

¹⁶ *Id.* at ¶ 6.

documents based on claims of attorney-client privilege and work product and redacted over 1,100 documents it produced on those same grounds.

In summary, the materials produced by Celsius, on which the Examiner relied to prepare her Final Report, included:

- Celsius organizational charts, rosters, and job descriptions.
- Celsius product development documents, policies, and procedures, including drafts.
- Celsius Customer Terms of Use.
- Financial and coin reports that Celsius used in the ordinary course of its business.
- Reports from Celsius's Fireblocks workspaces.
- Emails, Slack channels, and other communications involving Celsius employees relevant to Final Report topics, including but not limited to Celsius operations, risk management, deployments, investments, loans, the CEL token, product offerings, internal finance, tax, mining, marketing, and external communications.
- Wallet and asset mapping documents.
- Materials produced by Celsius to state and federal regulatory bodies.
- Presentations, agendas, and minutes related to Celsius's portfolios, risk, assets and liabilities, executives, coin listings, new business, deployments, reward rates, and Board of Directors.
- Financial and accounting data, reports, and projections.
- Documents related to transactions on select exchanges.
- Celsius's marketing and communications policies, procedures, and style guides.
- Documents related to Celsius's domestic and international tax filings, returns, exemption certificates, and other related documents, letters, and notifications.

- Communications involving Celsius and its tax advisors and/or domestic or international taxation authorities.
- Payment records, invoices, and other financial records associated with Celsius's mining business.
- Contracts, agreements, and other documents related to Celsius's mining business.
- Internal reports and analysis related to Celsius's mining business.

The Examiner encountered several challenges collecting data, records, and information from Celsius. In some instances, Celsius provided changing explanations about the availability of data that was critical to the Examiner's investigation. At times, the lack of full cooperation created significant challenges for the Examiner as she and her team worked expeditiously to meet court-imposed deadlines. Ultimately, these challenges required the Examiner to seek a short extension to file this Final Report.

Limitations in Celsius's production of records and data included the following:

1. Requests Related To Celsius's Financial Performance.

The Examiner expended significant time and effort reconstructing key metrics of Celsius's historical financial performance. As described in Part Two, Section VIII, Celsius lacked an effective technical infrastructure to track its assets and liabilities. The Examiner observed inconsistencies and inaccuracies in the financial data that Celsius was unable to explain. Celsius also told the Examiner that financial data from pre-petition periods may be unreliable and that certain financial reports that Celsius provided are not accurate.

The Examiner learned that, while Celsius recorded some information contemporaneously, it was not always preserved. In some cases, often due to personnel changes, Celsius employees did not know if the requested records existed or where they were maintained. This lack of institutional knowledge led to confusion, delays, inconsistencies, and mistakes about what was available for the Examiner's review and resulted, in some circumstances, in the Examiner being told records did not exist, which were then subsequently discovered. Examples of these problems arose in three key areas.

a. Assets And Liabilities.

In May 2021, Celsius began using what it referred to as the "Freeze Report"—a Google spreadsheet that used Application Programming Interfaces (APIs), an interface that allows software from different sources to communicate, to pull asset and liability data from Fireblocks, Celsius's internal financial systems, and third-party systems (*e.g.*, exchanges, DeFi platforms, etc.). As described in the Examiner's Interim Report, each Freeze Report provided a snapshot at a given point in time of assets and liabilities at a coin level.¹⁷ Celsius initially prepared the Freeze Report on a weekly basis; later, as its process improved, it prepared the Freeze Report multiple times per week. In total, between May 2021 through the Petition Date, Celsius prepared 136 Freeze Reports.

¹⁷ Examiner's Interim Report at § V.K.

As discussed further in Part Two, Section VIII.B., Celsius employees characterized the Freeze Report as unreliable, including because the API interface regularly pulled substantially inaccurate data that required manual adjustments. The need for manual review and adjustment called into question the accuracy of the Freeze Report and whether the errors incorporated into the Freeze Report on any given day were identified and corrected. When asked about the possibility of undiscovered errors, Celsius employees cautioned that the Examiner should draw no conclusions from any given Freeze Report and that their relevance was limited to providing a directional view of Celsius's business and financial condition at that time (for example, whether liquidity on any given crypto asset was increasing or decreasing). Despite these limitations, Celsius continued to use the Freeze Report because it had no viable alternative.

Celsius declined to produce to the Examiner all available versions of the Freeze Report. Instead, Celsius initially produced a small subset of the Freeze Report for select dates. In response to the Examiner's request for the Freeze Report on certain dates from May 2021 through the Petition Date, Celsius produced 136 Freeze Reports. The Examiner also requested historical source data for the period before Celsius began preparing the Freeze Report. Celsius reported that the source data was unavailable. Without the source data, the Examiner is unable to analyze Celsius's pre-May 2021 assets and liabilities at the coin level.

After the Examiner determined that certain information in the Freeze Report was hardcoded (*i.e.*, not generated using a formula)¹⁸ and the product of manual adjustments,¹⁹ the Examiner requested that Celsius provide the supporting schedules used to make the manual adjustments to assets and liabilities within the Freeze Report. Celsius did not produce the supporting schedules, and without those schedules, the Examiner cannot cross reference the data to its source to verify its accuracy.

In addition, the Freeze Reports produced to the Examiner use hardcoded values in the consolidating summary “Coin Stats” tab as well as in manual adjustment support tabs, making it difficult to trace to the source, certain of the totals reported in both assets and liabilities. Although the Freeze Reports do provide totals by coin for assets and liabilities, they are presented in a way where it is difficult to understand which assets offset which liabilities (and vice versa). For example, institutional and retail loans receivable (asset) are recorded in the crypto asset in which they were lent out, but the offsetting liability (Institutional/User Collateral) is recorded in the crypto asset of the collateral provided by the borrower (e.g., a borrower taking a USDC loan secured by BTC). The same is true when Celsius is the borrower (liability) of coins secured by

¹⁸ For example, the Coin Stats worksheet, which summarizes Celsius’s crypto asset balances by bringing in data from multiple other sources, contains cells with hardcoded amounts or formulas partially comprised of hardcoded amounts.

¹⁹ The Examiner found that within the Freeze Report, liabilities and assets were manually adjusted, and standalone entries also were added—often unaccompanied by explanations needed for an external analysis. Additionally, manual adjustments were embedded through various support tabs, which then fed into the Coin Stats tab, and which impeded a reviewer’s ability to track substantive changes.

posted collateral (asset) of another coin (e.g., Celsius taking a DOGE loan secured by ETC). This mismatching of assets and liabilities create challenges in calculating surpluses and deficits by coin since the offsetting entry is often in a different crypto asset.

b. Liquidity Position And Net Interest Margin.

In 2021, Celsius began preparing what it called the “Waterfall Report,” a real-time snapshot of Celsius’s liquidity position at a coin level based on the length of time it would take Celsius to liquidate any given crypto asset Celsius deployed. For each deployment, the Waterfall Report ranked how liquid that investment was, using tiers ranging from 1-6, with a rank of 1 being the most liquid of investments. The Liquidity Tiers Celsius used are as follows:²⁰

Liquidity Tier	Liquidation Period
1	Instant
2	Up to 24 hours
3	Up to 3 days
4	Up to 7 days
5	Up to 30 days
6	Greater than 30 days, or undetermined recovery

The Waterfall Report also contained information about the coins’ respective rates of yield (the revenue a coin generated), cost of funds (primarily the reward rate Celsius offered to customers on that coin type), and assets under management by coin and deployment. Celsius often generated the Waterfall Report multiple times each day.

²⁰ Celsius, LR / MLO Reporting – General Market Stress Scenario, Internal Company Document (May 02, 2022), CEL-UCC-00005218.

In response to the Examiner's November 10, 2022 request for all Waterfall Reports, Celsius initially located and produced 15 reports dated May 1, 2022 to June 15, 2022. According to Celsius, additional versions of the Waterfall Report were unavailable because Celsius's practice when it prepared a new version of the Waterfall Report was to overwrite the last version. However, soon after the Examiner indicated that she would report on Celsius's routine elimination of historical Waterfall Reports, Celsius located an additional 1,700 Waterfall Reports on Celsius's server, spanning February 24 to June 22, 2022. Because Waterfall Reports often were generated multiple times a day, the Examiner requested that Celsius produce the latest-in-time report for each day between February 24 and June 22, 2022, which resulted in the production of 70 additional Waterfall Reports.

According to Celsius, the Waterfall Reports that Celsius generated between May 2021 and February 24, 2022 no longer exist. To address this gap, the Examiner requested source data that could be used to recreate the data reflected in the Waterfall Reports for periods prior to February 2022. Celsius reported that the Waterfall Report source data prior to February 2022 does not exist. This lack of source data substantially limited the Examiner's ability to review Celsius's assessment of liquidity on a periodic basis. In addition, it impaired the Examiner's ability to analyze the net interest margin between the yield Celsius was earning on its deployed assets as compared to the rewards it was paying to its customers.

During interviews with Celsius employees, the Examiner learned of additional information that could be used to manually reconstruct relevant data, including weekly profit and loss reports prepared by Celsius’s finance team.²¹ The weekly profit and loss reports contained data regarding revenue generated across Celsius’s different deployment strategies, and—according to one Celsius employee—date back to at least June 2021. Following the interviews, Celsius produced available 2022 profit and loss reports and reported that it did not retain its profit and loss reports from 2021.

In addition, the Examiner learned from an employee that Celsius historically maintained data on assets and liabilities in what it referred to as the “AUM [assets under management] master spreadsheet.” Celsius produced only one version of the spreadsheet and reported that it did not retain any other versions of the spreadsheet. Metadata for the spreadsheet indicate that the spreadsheet was last modified in or about June 2020, but certain data in the spreadsheet did not appear to be current as of that time—for example, the spreadsheet contains no data on “Key Performance Indicators” after mid-2019. Celsius also did not produce any data from a product called Instilend, which one Celsius employee said was used to track Celsius’s institutional lending, as well as additional asset and liabilities data on a coin-by-coin basis.²²

²¹ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022); Examiner Interview of Kai Tang (Vice President of Controllershship – Celsius, December 23, 2022).

²² Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023).

c. Quarterly Financial Statements.

The Examiner's analysis of Celsius's financial condition also was hampered by Celsius's accounting systems. On November 30, 2022, the Examiner requested access to Celsius's QuickBooks accounting software, which is an accounting software package that is geared mainly toward small and medium-sized businesses. On December 8, 2022, Celsius provided the Examiner with audit access to the QuickBooks system, which permitted the Examiner to review balances and transactions for each of the Celsius entities and download the detailed general ledgers and income statements beginning with 2018.

Celsius maintains its financial account records in 15 separate entity-level QuickBooks files. The QuickBooks software was not programmed to consolidate the entity-level financial information into consolidated financial statements. Celsius began manually preparing consolidated financial statements in the second quarter of 2021. Celsius also produced, upon request, consolidating files for some quarterly financial statements.

The Examiner identified significant discrepancies between the account balances in the entity-level financial statements used in the consolidations (primarily in the intercompany accounts and the timing of revenue and expenses between periods) and the entity-level financial statements that Huron downloaded from Celsius's QuickBooks account. The Examiner ultimately learned that the consolidating files produced by Celsius were not the original files used to prepare the consolidated financial statements, but instead were created to respond to the Examiner's requests. Celsius reported that it was

unable to provide the actual entity-level consolidations that Celsius used in 2021 and 2022 to prepare the consolidated statements.

The Examiner prepared quarterly financial statements for the quarters-ended March 31, 2021 through June 30, 2022 using the QuickBooks records for each of the Celsius entities. In certain instances, the financial statements prepared by the Examiner differ from the summary financial statements prepared by Celsius, primarily due to the timing of adjusting entries booked by Celsius.

Using the accounting records in the QuickBooks system, and the financial statements prepared from them, the Examiner assessed the solvency of Celsius as a whole as of year-end 2018 – 2020 and the quarters-ended March 31, 2021 through June 30, 2022, and of Celsius Network LLC beginning the quarter-ended September 30, 2021. As part of this assessment, the Examiner prepared estimates of the value of Celsius Mining. The Examiner also prepared an analysis comparing Celsius's crypto asset related revenue to the rewards Celsius was paying to customers for the years 2018 through 2021 and the six months ended June 30, 2022.

2. Mining Requests.

The Examiner similarly experienced challenges in obtaining information relevant to her inquiry into Celsius Mining's payment of its utility bills. For example, on November 20, 2022, the Examiner asked Celsius to produce all Accounts Payable Aging reports for Celsius Mining's vendors with invoice-level detail. On November 30, 2022, Celsius informed the Examiner that the only

documentation of mining-related invoices owed and paid by Celsius was a weekly, non-cumulative spreadsheet used for the purpose of identifying which invoices Celsius should pay that week.

When the Examiner interviewed Celsius personnel, however, including Celsius's Mining Chief Financial Officer, the Examiner learned that Celsius tracks its invoices and payments in the accounting and financial management software, NetSuite.²³ The Examiner subsequently received information related to mining bills paid and owed and deposit balances held by Celsius Mining's vendors, but it remains unclear to the Examiner what, if any, information regarding mining-related payment obligations provided to the Examiner was derived from NetSuite, as opposed to compiled by Celsius for the purpose of responding to the Examiner's request.

3. Tax Requests.

The Examiner encountered similar challenges in obtaining information for her sales and use tax investigation. On October 14, 2022, the Examiner asked for Celsius's tax-related records, including opinions, correspondence, emails, and other materials relevant to the Examiner's investigation. Celsius indicated it would not engage in a full email review and would only provide readily accessible correspondence.

On December 1, 2022, during the Examiner's interview of Celsius Mining's Chief Financial Officer, the Examiner learned for the first time that Celsius

²³ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

Mining had tax-related documents that Celsius previously represented did not exist.²⁴ As a result, Celsius agreed to undertake a more comprehensive document and email collection. On December 10, Celsius began producing thousands of relevant documents and emails that contained information critical to the Examiner's tax investigation. As a result of this belated production, the Examiner had to interview four witnesses a second time (and one of those witnesses a third time) to follow up on information learned through newly provided documents.

D. Data And Records Collected From Parties Other Than Celsius.

The Examiner received data and records from Celsius vendors and state regulatory agencies. The Examiner independently collected social media posts, Celsius website content, and blog posts hosted by medium.com. The Examiner used the Internet Archive Wayback Machine to access certain content that is no longer available on the Celsius website or blog.²⁵ The Examiner also collected communications and documents from Celsius customers.

Part Two: Celsius's Crypto Assets And Public Representations.

Part Two of this Report addresses the investigation topics related to Celsius's crypto assets and its public representations. Due to the interrelated nature of these topics, the Examiner does not address each topic separately. These topics include: (1) Celsius's crypto asset holdings and whether different types of crypto assets were commingled; (2) Celsius's native CEL token, including

²⁴ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

²⁵ Internet Archive Wayback Machine, <https://archive.org/web/>.

why and how other crypto assets were converted into CEL tokens, and how CEL tokens were marketed, stored, and traded; (3) the impact of Celsius's trading practices on the value of its CEL token, including CEL tokens awarded as part of the Earn Program; (4) Celsius's public representations to attract customers to its platform and regarding its crypto asset holdings and account offerings; (5) whether Celsius used new deposits made by customers to make payments or otherwise meet obligations to existing customers at a time when Celsius had no other sources (whether liquid or which could have been monetized) from which to make such payments or meet such obligations; and (6) a determination of where Celsius stored crypto assets pre- and post-petition.

I. Background.

A. Summary Explanation Of Crypto Assets.²⁶

1. Crypto Assets.

Crypto assets, often referred to as "crypto" or "crypto currency," are a form of currency that only exists digitally.²⁷ Unlike U.S. dollars, which are backed by the U.S. government (known as fiat currency), digital assets do not require government backing and do not rely on the traditional banking system to verify transactions. Instead of being governed by a government central authority (such as the U.S. Federal Reserve Bank), digital assets are governed by users and are thus considered "decentralized." This user-based "peer-to-peer" system enables

²⁶ Part Two, Section I.A. and I.B. also appeared in the Examiner's Interim Report. Examiner's Interim Report at §§ IV.A.—B.

²⁷ The terms "digital asset," "crypto asset," "cryptocurrency," and "virtual currency" are often used interchangeably.

anyone, anywhere, to send and receive payments digitally without the involvement of a traditional financial institution. Proponents of digital assets contend that the decentralized nature of this system is more efficient and reduces the risk of corruption and government overreach.

Crypto assets received the name because they use encryption, known as cryptography, to verify transactions. Advanced computer software is required to store and transmit digital asset data between digital wallets and to digital public ledgers (the blockchain), as explained below. The aim of encryption is to provide security and safety.

2. The Blockchain.

Crypto asset transactions are verified and recorded on a digital public ledger known as the blockchain, which functions as an online database that stores records of specific digital transactions. Crypto asset payments exist purely as digital entries on the blockchain. Blocks in the chain are created when crypto asset transactions are verified and recorded in sequential time-stamped batches. The crypto assets at issue in this Report reside on public blockchains, for which the entire history of digital transactions is visible to anyone.

There are many different blockchains and they do not all function the same way. Two primary blockchain architectures are relevant to this Report, explained in more detail below: (i) those that use an “unspent transaction” or “UTXO” model, such as Bitcoin; and (ii) those that use an “account-based” model, such

as Ethereum. This distinction impacts how different crypto assets on each blockchain are transferred, tracked, and held.²⁸

Some digital assets like Bitcoin and Ether are native to their own blockchain, but not every crypto asset has its own blockchain. Certain blockchains also enable users to create new crypto assets on that blockchain, so that one blockchain can host many different crypto assets.²⁹ Many of the assets at issue in this Report, including the CEL token, reside on the Ethereum blockchain.

3. Public-Private Key Cryptography.

For both UTXO and account-based blockchains, transfers on the blockchain take place between publicly visible blockchain digital addresses that appear as a seemingly random string of letters and numbers, such as “bc1q2ye2gzrh9utdtdu54cchufm2g8nu29t3ghvgw6.” These blockchain addresses are generated and secured with a form of cryptography known as public-private key cryptography. The digital address visible on a public blockchain is derived from the public key, and that digital address and public

²⁸ The extent to which particular crypto assets are traceable from transfer to transfer depends on the type of blockchain. With account-based blockchains like Ethereum, there is no way to identify which inbound deposit correlates to any particular outbound transfer. With UTXO blockchains, like Bitcoin, it is theoretically possible to trace an incoming deposit to a particular outbound transfer, but the transfer process takes place behind the scenes in automated software, and so any correlation between any user’s deposit and any particular subsequent transfer would be coincidental.

²⁹ Crypto assets native to a blockchain, such as Bitcoin on the Bitcoin blockchain and Ether on the Ethereum blockchain, are known as “coins.” Crypto assets issued on top of existing networks, such as the CEL token issued on the Ethereum blockchain, are known as “tokens.” The distinction between coins and tokens is not relevant to this Report.

key can be shared with anyone (and must be shared for others to send *to* that address, like sharing an e-mail address). Each public key is derived from and paired with a private key, which functions like a password. To execute a transaction transferring crypto assets *from* a public address, one must enter the private key associated with that particular address.³⁰ Thus, control of the private key determines control of the crypto assets at the associated public blockchain address. In the market for crypto assets, “custody” typically refers to holding private keys on behalf of customers.³¹

A person or entity holding private keys (whether for themselves or on behalf of others) typically deploys one or more technology products and/or security services to assist in holding and managing the private keys. These solutions range from a simple software “wallet” that stores the private keys and keeps track of the blockchain addressee, to hardware that allows the private keys to be maintained offline (referred to as “cold storage” if disconnected from the Internet). In addition, numerous third-party services offer enhanced security solutions.

³⁰ Most blockchains also support multi-signature functionality, in which a single address would have multiple private keys necessary to effect a transaction, equivalent to needing to use two keys to open a vault.

³¹ Interpretive Letter #1170, Office of the Comptroller of the Currency (July 22, 2020), at 5, [https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf](https://www OCC.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf) (“Therefore, a bank ‘holding’ digital currencies on behalf of a customer is actually taking possession of the cryptographic access keys to that unit of cryptocurrency.”).

B. The Nature Of Celsius's Crypto Assets.

Celsius held dozens of different types of crypto assets. For purposes of this Report, we discuss the movement of Celsius's crypto assets in five broad categories:³²

1. Bitcoin (BTC).

Bitcoin (BTC) is the most well-known digital asset. It is the native token for the Bitcoin blockchain, which was introduced with the publication of a white paper in 2008 and is generally considered the first blockchain.³³ The Bitcoin blockchain network is designed to perform a single function: record transfers of BTC, which it does by maintaining an unalterable distributed ledger of transactions.³⁴ The Bitcoin blockchain uses a UTXO protocol to track the BTC movement on the Bitcoin blockchain. In short, a UTXO is a digital ledger entry for crypto assets not yet spent, and a user's digital wallet balance is calculated from the aggregation of UTXOs. Bitcoin wallet software automates this process to facilitate transactions and display the aggregate balance, so users typically do not see the UTXO process.

³² Appendix 4, for a mapping of crypto assets held by Celsius with respect to each of these categories during this time.

³³ Nakamoto, Satoshi, Bitcoin: A Peer-to-Peer Electronic Cash System, Bitcoin (2008), <https://bitcoin.org/bitcoin.pdf> (last visited January 29, 2023).

³⁴ Nakamoto, Satoshi, Bitcoin: A Peer-to-Peer Electronic Cash System, Bitcoin, 2-3 (2008), <https://bitcoin.org/bitcoin.pdf> (last visited January 29, 2023).

2. Ether (ETH).

Ethereum is the second largest blockchain and has a native crypto asset known as Ether (ETH). In order to use the Ethereum blockchain, the user must spend ETH as “gas” to pay for each transaction they initiate on the Ethereum blockchain.

Unlike Bitcoin, the Ethereum blockchain uses an account-based model. In the account-based model, the aggregate balance of ETH held at each Ethereum blockchain address is kept as a ledger, so that when a user transfers ETH from one address to another, the total ledger balance of each address is adjusted accordingly. Unlike in the UTXO model, users in the account-based model cannot trace inbound transactions to outbound transactions—the outbound transaction updates the aggregate account balance stored on the Ethereum blockchain, without identifying any particular inputs.

The Ethereum blockchain also provides a mechanism for users to participate in the process of generating new blocks by “staking” (effectively locking up) ETH tokens.³⁵ By staking, users receive a portion of the fees (currently 4.4% APR) captured by the creators of each new block.

Many users (including Celsius) stake ETH through a third party, Lido.³⁶ In exchange for staking ETH with Lido, the user receives an equivalent amount of

³⁵ How to Stake Your ETH, Ethereum, <https://ethereum.org/en/staking/> (last visited January 29, 2023).

³⁶ Stake with Lido, Lido, <https://stake.lido.fi/> (last visited January 29, 2023).

a separate token, “stETH,” intended to function as a claim check for the staked ETH.³⁷

At present, it is not possible to “unstake” ETH, but the ability to unstake is planned for a future upgrade of the Ethereum network.³⁸ If that planned upgrade takes place (at a yet-to-be-determined point in the future), users will be able to unstake ETH by exchanging their stETH for ETH.³⁹ As a result, stETH has a theoretical value equivalent to ETH. However, with no present ability to unstake, the only way to exchange stETH for ETH is in the secondary market, where stETH trades at a discount to ETH.⁴⁰ As discussed further below, Celsius’s internal accounting reflects stETH as an “ETH Equivalent.”

3. Celsius’s Token (CEL).

The CEL token does not have its own blockchain; it is an ERC-20 token on the Ethereum blockchain.⁴¹

The Ethereum blockchain is more complex than the Bitcoin blockchain and does much more than just record transfers of ETH. It also functions as a decentralized computer, enabling users to upload computer code to the

³⁷ *Id.* (noting that “stETH token balances are issued 1:1 to the ethers that are staked by Lido[]”).

³⁸ Shanghai Planning #450, Github, <https://github.com/ethereum/pm/issues/450> (last visited January 29, 2023) (containing—on a discussion forum for the planned Ethereum “Shanghai” upgrade—a comment that ETH will be “unstake-able until the Shanghai Upgrade”).

³⁹ *Id.*

⁴⁰ Lido Staked ETH, CoinMarketCap, <https://coinmarketcap.com/currencies/steth/steth/eth/> (last visited January 29, 2023).

⁴¹ Examiner’s Interim Report at §§ IV.B.3.

blockchain so that all users can access the code and operate it as a form of decentralized application (akin to running “apps” on a cellphone except that the apps are stored and operated on the public Ethereum blockchain network).⁴² These programs, often referred to as “smart contracts,”⁴³ can be used to automate a series of transactions or to perform more complex functions.⁴⁴

One early smart contract on the Ethereum blockchain contained a template of computer code for users to create their own crypto asset tokens and record transactions involving their new tokens by deploying that code on the Ethereum blockchain.⁴⁵ The template was published as a proposal with a request for comment (Ethereum request for comment number 20, or “ERC-20”).⁴⁶ The proposed ERC-20 template made creating new tokens easy (an experienced user can launch a new ERC-20 token in minutes), and the template served as a standard so that any crypto assets created using that template would be compatible with each other.⁴⁷ All ERC-20 tokens could be sent to or from standard Ethereum blockchain addresses, and any wallet, exchange, or other software made to interact with ERC-20 tokens could easily interact with any

⁴² Ethereum Virtual Machine (EVM), Ethereum, <https://ethereum.org/en/developers/docs/evm/> (last visited January 29, 2023).

⁴³ “Smart contract” is a term used to refer to executable computer code deployed on a blockchain network. See Appendix 1.

⁴⁴ Ethereum Virtual Machine (EVM), Ethereum, <https://ethereum.org/en/developers/docs/evm/> (last visited January 29, 2023).

⁴⁵ *Id.*

⁴⁶ ERC: Token Standard #20, Github, <https://github.com/ethereum/EIPs/issues/20> (last visited January 29, 2023).

⁴⁷ ERC-20 Standard Token (last visited January 29, 2023) [https:// ethereum.org/en/developers/docs/standards/tokens/erc-20/](https://ethereum.org/en/developers/docs/standards/tokens/erc-20/).

token adopting that standard.⁴⁸ Since then, thousands of tokens have been created using the ERC-20 standard.⁴⁹ CEL is an ERC-20 token deployed on the Ethereum blockchain.⁵⁰ There are thousands of other ERC-20 tokens, including many of the crypto assets held by Celsius and addressed below.

4. Stablecoins (USDC, USDT, PUSD).

In addition to BTC, ETH, and CEL, Celsius held a number of stablecoins. Stablecoins are crypto assets designed to maintain a stable price pegged to an underlying asset (most commonly, the U.S. Dollar). For U.S. Dollar stablecoins, each token is intended to maintain a value of \$1.00, typically by holding (or purporting to hold) reserves of cash or cash equivalents so that each token is backed 1-to-1 by actual U.S. dollar assets.⁵¹ Multiple companies have issued U.S. Dollar stablecoins, including USD Coin (“USDC”),⁵² Tether (“USDT”),⁵³ and

⁴⁸ *Id.*

⁴⁹ Castor, Amy, Ethereum ‘Tokens’ Are All the Rage. But What Are They Anyway?, CoinDesk (June 17, 2017, updated September 11, 2021), <https://www.coindesk.com/markets/2017/06/17/ethereum-tokens-are-all-the-rage-but-what-are-they-anyway/> (last visited January 29, 2023).

⁵⁰ Token, Celsius, Etherscan, <https://etherscan.io/token/0xaae6be6fe48e54f431b0c390cfaf0b017d09d42d#code> (last visited January 29, 2023) (listing CEL as an ERC-20 token in the token “Overview” section).

⁵¹ The Stable in Stablecoin, Board of Governors of the Federal Reserve, <https://www.federalreserve.gov/econres/notes/feds-notes/the-stable-in-stablecoins-20221216.html> (last visited January 29, 2023). Celsius made no distinction between the treatment of stablecoins versus any other digital asset under its Terms of Use or in its deployment or treatment of the coin.

⁵² Crypto That’s Held to a Higher Standard, Circle, <https://www.circle.com/en/usdc> (last visited January 29, 2023).

⁵³ Tether Token, Tether, <https://tether.to/en/> (last visited January 29, 2023).

Pax Dollar (“USDP”).⁵⁴ Each of these examples is an ERC20 token on the Ethereum blockchain.

5. Other Digital Assets (i.e., ADA, DOT, LTC).

The majority of Celsius’s crypto assets were BTC, ETH, CEL, and stablecoins. However, Celsius also held scores of other crypto assets—a mix of ERC-20 tokens on the Ethereum blockchain, and tokens operating on their own or other blockchains. In aggregate, all of the other digital assets comprised a relatively small portion of Celsius’s total crypto assets.

6. Centralized Finance (“CeFi”) and Decentralized Finance (“DeFi”).

As discussed above, the Ethereum blockchain functions as a virtual machine capable of running computer programs, often referred to as smart contracts.⁵⁵ The ERC20 template is an example of a simple smart contract for creating and tracking a token.⁵⁶

Over time, smart contracts have been deployed to automate more complex financial transactions such as exchanging, borrowing, and lending digital assets. The services enabled by smart contracts performing financial transactions on

⁵⁴ Pax Dollar, Paxos, <https://paxos.com/usdp/> (last visited January 29, 2023).

⁵⁵ Ethereum Virtual Machine (EVM), Ethereum, <https://ethereum.org/en/developers/docs/evm/> (last visited January 29, 2023).

⁵⁶ Understand the ERC-20 Token Smart Contract, Ethereum (April 4, 2020), <https://ethereum.org/en/developers/tutorials/understand-the-erc-20-token-smart-contract/> (last visited January 29, 2023).

decentralized blockchains are often collectively referred to as decentralized finance, or “DeFi.”⁵⁷

7. Wrapped Tokens (i.e., WBTC, wETH).

Many DeFi platforms are designed to operate with ERC-20 tokens. To use tokens other than ERC-20 on those DeFi platforms, one must exchange the non-ERC-20 token for a financially equivalent ERC-20 token, otherwise known as a “wrapped” token. For example, a wrapped Bitcoin (“WBTC”) is an ERC20 token pegged to the value of Bitcoin and supported by a reserve of Bitcoin.⁵⁸ As discussed further below, Celsius’s internal accounting reflects WBTC as a “BTC Equivalent” and wETH as an “ETH Equivalent.”

C. The Rise And Fall Of The Crypto Markets.

Celsius’s founding, growth, and decline can be understood in part against the backdrop of the volatile market for crypto assets from 2017 to 2022. This period was marked by a meteoric rise in the price of crypto assets in 2017 and early 2018 that garnered widespread national attention, followed by a down-

⁵⁷ Lu, Kevin, A Dive Into Smart Contracts and DeFi, CoinMarketCap, <https://coinmarketcap.com/alexandria/article/a-dive-into-smart-contracts-and-defi> (last visited January 29, 2023). DeFi should not be confused with the myriad centralized entities that offer financial services of one kind or another related to crypto assets. Platforms that enable borrowing and lending, such as Celsius, and centralized exchanges such as Coinbase, are not DeFi platforms, even though they involve crypto assets, because they are operated by centralized companies and are not automated software operating on decentralized public blockchain networks.

⁵⁸ Do More With Your Bitcoin, WBTC, <https://wbtc.network/> (last visited January 29, 2023). WBTC is created using intermediaries and custodians to hold BTC and issue WBTC, while wETH is managed by a smart contract that automatically issues wETH in response to receiving ETH and returns ETH in response to receiving wETH. *Id.*; Token, Wrapped Ether, Etherscan, <https://etherscan.io/token/0xc02aaa39b223fe8d0a0e5c4f27ead9083c756cc2#code> (last visited January 29, 2023).

market referred to as a “crypto winter” that lasted from mid-2018 through approximately mid-2020. That crypto winter was followed by another bull market starting in mid-2020 and featuring another meteoric rise in crypto asset prices from late 2020 through late 2021. The 2020-2021 bull market corresponded with a rise in traditional equity markets that followed the initial shock of the COVID-19 pandemic.⁵⁹ During this time, the total market capitalization of crypto assets increased from approximately \$191 billion on January 1, 2020, to \$2.97 trillion in November 2021—a nearly 1,455% increase.⁶⁰ The price of Bitcoin went from opening at \$7,195 on January 1, 2020, to increasing 859% to a peak of nearly \$69,000 in November 2021.⁶¹

Late 2021 and the entirety of 2022, however, saw a dramatic drop in the price of crypto assets.⁶² After its November 2021 peak at \$2.97 trillion, the total market capitalization of crypto assets fell nearly 75% to below \$800 billion by

⁵⁹ Macheel, Tanaya & Stevens, Pippa, Dow jumps to a new all-time high, S&P 500 notches 6-day win streak, CNBC (October 19, 2021, updated October 20, 2021), <https://www.cnbc.com/2021/10/19/stock-market-futures-open-to-close-news.html> (last visited January 29, 2023); Miao, Hannah & Macheel, Tanaya, S&P 500 ends 2021 with a nearly 27% gain, but dips in final trading day, CNBC (December 30, 2021, updated December 31, 2021), <https://www.cnbc.com/2021/12/30/stock-market-futures-open-to-close-news.html> (last visited January 29, 2023).

⁶⁰ Global Cryptocurrency Charts, Total Cryptocurrency Market Cap, CoinMarketCap, <http://www.coinmarketcap.com/charts/> (last visited January 29, 2023).

⁶¹ Bitcoin USD (BTC-USD), Yahoo! Finance, <https://finance.yahoo.com/quote/BTC-USD/history?period1=1577836800&period2=1640908800&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true> (last visited January 29, 2023).

⁶² Global Cryptocurrency Charts, Total Cryptocurrency Market Cap, CoinMarketCap, <http://www.coinmarketcap.com/charts/> (last visited January 29, 2023).

the end of 2022.⁶³ The price of Bitcoin dropped 76% between November 2021 and the end of 2022, falling from approximately \$69,000 to \$16,500.⁶⁴

FIGURE 1: TOTAL CRYPTO ASSET MARKET CAP



Note: This graph shows the total market capitalization of all crypto assets, including stablecoins and tokens, from January 1, 2017 to December 31, 2022.⁶⁵

The bull markets of 2017-2018 and 2020-2021 each resulted in the proliferation of new crypto assets and crypto-related companies, reflecting a combination of rapid technological development and the entry of opportunists looking to capitalize on the latest trend.⁶⁶ While Bitcoin remained the predominant crypto asset throughout this period, a broad set of other crypto assets gained market share in each bull market.⁶⁷

⁶³ *Id.*

⁶⁴ Bitcoin USD (BTC-USD), Yahoo! Finance, <https://finance.yahoo.com/quote/BTC-USD/history?p=BTC-USD> (last visited January 29, 2023).

⁶⁵ Global Cryptocurrency Charts, Total Cryptocurrency Market Cap, CoinMarketCap, <http://www.coinmarketcap.com/charts/> (last visited January 29, 2023).

⁶⁶ Levine, Matt, The Only Crypto Story You Need, Bloomberg (October 25, 2022), <https://www.bloomberg.com/features/2022-the-crypto-story/> (last visited January 29, 2023).

⁶⁷ Global Cryptocurrency Charts, Total Cryptocurrency Market Cap, CoinMarketCap, <http://www.coinmarketcap.com/charts/> (last visited January 29, 2023). At its highest

**FIGURE 2: MAJOR CRYPTO ASSETS BY PERCENTAGE OF
TOTAL MARKET CAPITALIZATION**



Note: This graph shows the individual proportions of the largest ten crypto assets relative to the total market capitalization of all assets.⁶⁸

From 2017 to 2021, a variety of companies emerged and began offering customers ways to earn interest or rewards with their crypto assets. Celsius and

price (just above \$8.01, in early June 2021), Celsius's own token's market cap was \$1,914,160,488. Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023). Thus, Celsius did not have significant market dominance that would register in the global cryptocurrency market chart. Indeed, today, Celsius's market dominance is estimated between 0.01% and 0.03% of the total cryptocurrency market. Celsius Network Price, CoinCodex, <https://coincodex.com/crypto/celsius-network/?period=1M> (last visited January 29, 2023) (listing CEL's market dominance, as of January 23, 2023, as 0.02%).

⁶⁸ Global Cryptocurrency Charts, Major Cryptoassets By Percentage of Total Market Capitalization (Bitcoin Dominance Chart), CoinMarketCap, [http:// www. coinmarket cap.com/charts/](http://www.coinmarketcap.com/charts/) (last visited January 29, 2023).

many of its competitors, including Nexo,⁶⁹ BlockFi,⁷⁰ and Voyager Digital,⁷¹ launched in 2018. Nexo began offering interest on certain crypto assets later that year.⁷² BlockFi began offering “BlockFi Interest Accounts” in March 2019.⁷³ Voyager Digital began offering an “Interest Program” for customers in November 2019.⁷⁴

During the bear market in 2022, many of these crypto lending and rewards companies collapsed.⁷⁵ The triggering event was in May 2022, when a prominent blockchain platform for stablecoins, Terra, and its related crypto asset, Luna

⁶⁹ Yaffe-Bellany, David, Crypto Lender Nexo Is Fined \$45 million as Crackdown Widens, New York Times (January 19, 2023), <https://www.nytimes.com/2023/01/19/business/nexo-sec-crypto-fined.html> (last visited January 29, 2023).

⁷⁰ Stevens, Robert, BlockFi’s Rise and Fall: A Timeline, CoinDesk (November 30, 2022), <https://www.coindesk.com/learn/blockfis-rise-and-fall-a-timeline/> (last visited January 29, 2023).

⁷¹ Voyager Digital Provides Market Update, PRNewswire (June 27, 2022), <https://www.prnewswire.com/news-releases/voyager-digital-provides-market-update-301575492.html> (last visited January 29, 2023).

⁷² Nexo Interim Report, Nexo (December 18, 2018), <https://drive.google.com/file/d/1COWvaCtUrHKx94-9EM3qvDm3jouJbnfx/view> (describing launch of “liquidity provision program” as offering customers “6.5% per annum on their stablecoin holdings”); Earn 8% on USDT, DAI, PAX, USDC and TUSD, Compounding Daily and Secured by Custodial Insurance, Nexo (March 21, 2019), <https://nexo.io/blog/earn-up-to-6-5-on-dai-pax-usdc-compounding-daily-and-secured-by-custodial-insurance> (last visited January 29, 2023).

⁷³ *Order Instituting Cease-and-Desist Proceeding Pursuant to Section 8A of the Securities Act of 1933 and Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order at paragraph 5* dated February 14, 2022, In the Matter of BlockFi Lending, LLC, Admin. Pro. Case No. 3-20758, <https://www.sec.gov/litigation/admin/2022/33-11029.pdf>, at ¶ 1.

⁷⁴ Voyager Digital Launches New Bitcoin Interest Program, AP News (October 23, 2019), <https://apnews.com/article/technology-business-canada-bitcoin-bbea94e1b74c4896a6d8a3a66e95a6c2> (last visited January 29, 2023).

⁷⁵ Knauth, Dietrich, Factbox: Crypto companies crash into bankruptcy, Reuters (December 1, 2022), <https://www.reuters.com/technology/crypto-companies-crash-into-bankruptcy-2022-12-01/> (last visited January 29, 2023).

(“Terra/Luna”), lost 99% of its value over a period of days.⁷⁶ The collapse of Terra/Luna had ripple effects throughout the crypto asset ecosystem. It caused the collapse of prominent crypto asset hedge fund Three Arrows Capital (“3AC”), one of the largest borrowers from crypto lending companies.⁷⁷ On June 29, 2022, 3AC was ordered into liquidation by a British Virgin Islands court.⁷⁸ The collapse of 3AC in turn caused Voyager Digital to file for bankruptcy on July 6, 2022.⁷⁹ BlockFi also faced a liquidity crisis as a result of its exposure to 3AC.⁸⁰ BlockFi was temporarily aided by a loan from crypto exchange FTX, but FTX and its affiliated crypto fund Alameda Research collapsed and filed for bankruptcy in mid-November 2022, leading BlockFi to also file for bankruptcy on November 28, 2022.⁸¹

⁷⁶ Sandor, Krisztian & Genç, Ekin, The Fall of Terra: A Timeline of the Meteoric Rise and Crash of UST and LUNA, CoinDesk (December 22, 2022), <https://www.coindesk.com/learn/the-fall-of-terra-a-timeline-of-the-meteoric-rise-and-crash-of-ust-and-luna/> (last visited January 29, 2023).

⁷⁷ Sigalos, MacKenzie, From \$10 billion to zero: How a crypto hedge fund collapsed and dragged many investors down with it, CNBC (July 11, 2022), <https://www.cnbc.com/2022/07/11/how-the-fall-of-three-arrows-or-3ac-dragged-down-crypto-investors.html>.

⁷⁸ Ng, Serena, Crypto Hedge Fund Three Arrows Capital Considers Asset Sales, Bailout, Wall Street Journal (June 17, 2022), https://www.wsj.com/articles/battered-crypto-hedge-fund-three-arrows-capital-considers-asset-sales-bailout-11655469932?mod=latest_headlines (last visited January 29, 2023); *Verified Petition Under Chapter 15 For Recognition Of A Foreign Main Proceeding And Related Relief* dated July 1, 2022, Case No. 22-10920(MG) [Dkt. 2].

⁷⁹ *Declaration of Stephen Ehrlich, Chief Executive Officer of the Debtors, In Support of Chapter 11 Petitions and First Day Motions* dated July 6, 2022, In re Voyager Digital Holdings, Inc., Case No. 22-10943 [Dkt. 15], <https://cases.stretto.com/public/x193/11753/PLEADINGS/1175307062280000000036.pdf>, at ¶¶ 55-56.

⁸⁰ *Declaration of Mark A. Renzi In Support of Debtors’ Chapter 11 Petitions and First-Day Motions*, In re BlockFi Inc., Case No. 22-19361(MBK) [Dkt. 17], <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rB6b3dXLT378/v0>, at ¶ 87.

⁸¹ *Id.* at ¶¶ 89-97.

II. Celsius And Its Business Model.

A. The Conception And Launch Of Celsius.

Celsius's founders, Alex Mashinsky and S. Daniel Leon, according to the Celsius website, drew up their plan for Celsius on a "coffee shop napkin" in the middle of the first crypto asset boom in the summer of 2017.⁸² Mr. Mashinsky was a technology sector entrepreneur without experience or formal training in the financial industry and to whom crypto was a "totally new field."⁸³ Mr. Mashinsky said that, as he formed Celsius, he relied on his self-described "unique skill" to "project into the future and imagine what the world is going to be like."⁸⁴ Mr. Leon was an entrepreneur and Chief Executive Officer of several early-stage technology companies.⁸⁵

Celsius was originally conceived as a peer-to-peer lending network in which users could borrow or lend tokens to each other, with loans managed on the blockchain by smart contracts.⁸⁶ The proposed token (then called the Degree

⁸² About Us, Celsius, <https://celsius.network/about-us> (last visited January 29, 2023).

⁸³ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁴ *Id.*

⁸⁵ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 18.

⁸⁶ SOSA NYC presentation, Facebook (October 23, 2017), <https://www.facebook.com/CelsiusNetwork/videos/2054916154737103/> (last visited January 29, 2023) (containing a segment on Celsius).

token) “[would] not be used as currency, but rather as a way to apply for credit,” with Celsius customers using it to initiate loans.⁸⁷

By the time Celsius opened for business, Mr. Mashinsky had changed the business model from a lending facility to a “simple app that would accept your coins and we would deploy them for you”⁸⁸ Mr. Mashinsky believed he could package crypto assets on a “killer app” to enable fair distribution of yield to “the unbanked” or “people who are pushed away from society,” in contrast to traditional banks that keep returns and charge fees.⁸⁹

Starting in September 2017, before even forming the business entities that would become Celsius, Mr. Mashinsky began marketing Celsius through social media, as well as at conferences and industry and marketing events.⁹⁰ By October 2017, Mr. Mashinsky began to pre-sell a future token—initially called “Degree” and later called “CEL”—in private offerings limited to certain international and accredited U.S. investors.⁹¹ Mr. Mashinsky intended that these

⁸⁷ How Will Blockchain Impact the Future of Consumer Credit?, Zero Plus Finance (October 27, 2017), <https://www.zeroplusfinance.com/how-will-blockchain-impact-the-future-of-consumer-credit/> (last visited January 29, 2023).

⁸⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁹ *Id.*

⁹⁰ #BLOCKCON, Alex Mashinsky: Peer to Peer Lending, YouTube (November 13, 2017), <https://www.youtube.com/watch?v=ujBLuMDpnBs&t=4s>; BGN – Blockchain Global News, CELSIUS – The Credit Coin | Founder & CEO Alex Mashinsky | Fintech World’s ICO Road Show, YouTube (February 22, 2018), <https://www.youtube.com/watch?v=mBHCU80g-BA>; Cryptospace conference, Alex Mashinsky. What will the ICO survivors look like, YouTube (December 22, 2017) <https://www.youtube.com/watch?v=IKj6nc0Wz5k&t=822s>.

⁹¹ Goldstein, Nuke, Slack (March 1, 2019), CEL-UCC-00182002.

sales, along with an anticipated initial coin offering, described below, would fund Celsius's initial business operations.⁹²

B. Celsius's Business Entities.

On February 8, 2018, Mr. Mashinsky and Mr. Leon incorporated Celsius Network Inc. in Delaware, the first of the business entities that today are generally known as Celsius.⁹³ As of the filing of the chapter 11 petitions for Celsius Network Inc. and the related debtors, on July 12, 2022 (the "Petition Date"), Mr. Mashinsky owned 83.7%, and Mr. Leon owned 16.3%, of Celsius Network Inc.⁹⁴

On February 9, 2018, Celsius Network Inc. incorporated Celsius Network Limited as a United Kingdom private limited company.⁹⁵ Celsius Network Limited was the original entity through which Celsius operated its retail customer-facing business through the summer of 2021. Both Celsius Network Inc. and Celsius Network Limited maintained their corporate headquarters in the United Kingdom.⁹⁶

⁹² Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

⁹³ Entity Details, Celsius Network Inc., File No. 6748208, State of Delaware Department of State: Division of Corporations (February 8, 2018), <https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx> (last visited January 29, 2023).

⁹⁴ *Chapter 11 Voluntary Petition for Non-Individual* dated July 13, 2022, *In re Celsius Network Inc.*, Case No. 22-10965 (MG) [Dkt. 1], at 6.

⁹⁵ Certificate of Incorporation of a Private Limited Company, Company No. 11198050, Companies House, Registrar of Companies for England and Wales (February 9, 2018) (listing a London address as Celsius Network Limited's proposed registered office address).

⁹⁶ Celsius Community Update — June 23, 2021, Medium (June 23, 2021), <https://celsiusnetwork.medium.com/celsius-community-update-june-23-2021-a28fca899091> (last visited January 29, 2023).

In the years following Celsius Network Inc.'s February 2018 incorporation, it added many entities, incorporated in multiple countries, to its corporate umbrella. Today, Celsius Network Limited operates as the holding company for roughly 20 directly or indirectly owned subsidiaries.⁹⁷ Celsius Network, Inc. (owned by Mr. Mashinsky and Mr. Leon) owns approximately 60% of Celsius Network Limited, and outside investors own the other approximately 40%.⁹⁸ Significant for purposes of this Final Report are the 2020 formation of Celsius Mining LLC⁹⁹ and the 2021 formation of Celsius Network LLC, both as Delaware limited liability companies.¹⁰⁰

In response to regulatory pressure it was facing in the United Kingdom in 2021, Celsius reorganized its customer-facing business and moved its corporate headquarters to New Jersey.¹⁰¹ On June 14, 2021, Celsius caused Celsius Network LLC to be incorporated as a Delaware limited liability corporation.¹⁰² In a June 23, 2021 Community Update posted on its webpage, Celsius Network Inc.

⁹⁷ *Declaration of Alex Mashinsky Chief Executive Officer of Celsius Network LLC, In Support of Chapter 11 Petitions and First Day Motions* dated July 14, 2022 [Dkt. 23], at Exhibit A.

⁹⁸ *Id.* at ¶ 87.

⁹⁹ Entity Details, Celsius Mining LLC, File No. 3811344, State of Delaware Department of State: Division of Corporations (October 5, 2020), <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (last visited January 29, 2023).

¹⁰⁰ Entity Details, Celsius Network LLC, File No. 5998837, State of Delaware Department of State: Division of Corporations (June 14, 2021), <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (last visited January 29, 2023).

¹⁰¹ Celsius, LinkedIn, <https://www.linkedin.com/company/celsiusnetwork> (last visited January 29, 2023) (listing Hoboken, New Jersey as the site of Celsius's headquarters).

¹⁰² Entity Details, Celsius Network LLC, File No. 5998837, State of Delaware Department of State: Division of Corporations (June 14, 2021), <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (last visited January 29, 2023).

announced it was relocating its headquarters from the United Kingdom to the United States, citing “increased regulatory uncertainty . . . in the UK and recent news from the industry overall.”¹⁰³ Celsius further stated, “This will provide Celsius and its community with more stability, clarity, and development opportunities to continue expanding our global impact and infrastructure.”¹⁰⁴

In August 2021, Celsius transferred all of its customer accounts from Celsius Network Limited to Celsius Network LLC.¹⁰⁵ Celsius management referred to this transfer of customers internally as the “migration” and it is discussed in further detail below in Part Two, Section XII. Set forth below is a chart of Celsius’s corporate structure as of the Petition Date.¹⁰⁶

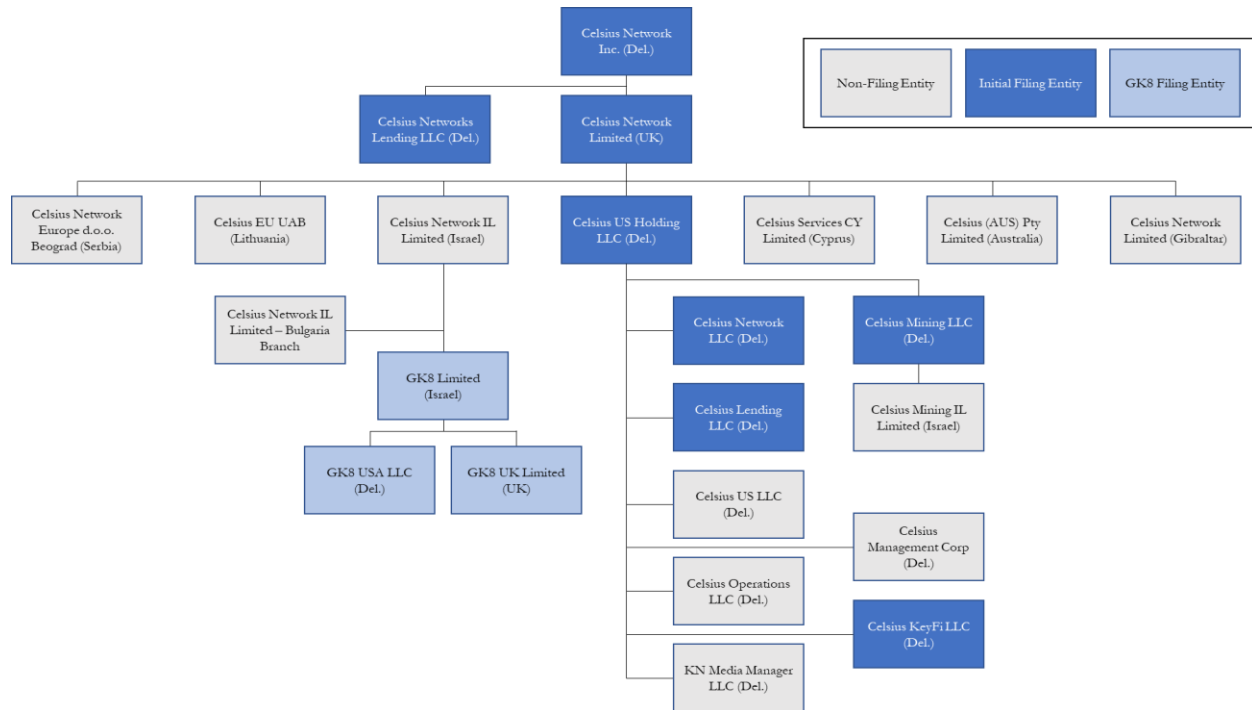
¹⁰³ Celsius Community Update — June 23, 2021, Medium (June 23, 2021), <https://celsiusnetwork.medium.com/celsius-community-update-june-23-2021-a28fca899091> (last visited January 29, 2023).

¹⁰⁴ *Id.*

¹⁰⁵ Hearing Transcript (July 18, 2022), at 31:20-32:2 (Celsius indicating, “Up until August of 2021 . . . Celsius Network Limited UK was the customer-facing party for the retail depositors. . . . In August of last year, Celsius Network Limited UK, transferred the existing customer accounts down to Celsius Network LLC.”).

¹⁰⁶ *Declaration of Alex Mashinsky Chief Executive Officer of Celsius Network LLC, In Support of Chapter 11 Petitions and First Day Motions* dated July 14, 2022 [Dkt. 23], at Exhibit A. This chart does not depict the non-Debtor owners of Celsius Network Limited.

FIGURE 3: ORGANIZATIONAL CHART



Note: Corporate organizational chart prepared by Celsius, does not depict non-Celsius shareholders of Celsius Network Limited (UK).¹⁰⁷

As of the Petition Date, Celsius Network Inc. owned approximately 60% of the Ordinary B Shares in Celsius Network Limited.¹⁰⁸ Institutional investors and individuals own the remaining 40% of Celsius Network Limited in the form of Class A Preferred Shares, Class A1 Preferred Shares, Class B Preferred Shares, and Ordinary Class B Shares.¹⁰⁹ As summarized in Appendix 5, these investors

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at ¶ 87.

¹⁰⁹ *Id.*

acquired their interests in Celsius Network Limited through a series of investments from 2019 through 2022.

* * *

In this Report, the Examiner uses the term “Celsius” to refer to the entire Celsius umbrella of companies and when Celsius itself did not make a distinction amongst its various entities. The term “Celsius” is also used to refer generally to the customer-facing network business. Celsius Network (UK) refers to Celsius Network Limited, the United Kingdom entity that operated the customer network before the August 2021 migration. Celsius Network (US) refers to Celsius Network LLC.¹¹⁰

C. Celsius’s Reconceived Business Model.

Celsius’s website initially advertised its business as a peer-to-peer lending network, consistent with the initial conception of the business.¹¹¹ However, by the time Mr. Mashinsky and Mr. Leon incorporated Celsius Network Inc., they had changed its business model. Instead of a peer-to-peer lending network, Celsius instituted a centralized lending model in which users would “deposit coins on the Celsius Network” (*i.e.*, send their crypto assets to a wallet managed

¹¹⁰ The scope of the Examiner’s mandate did not include an examination of whether the different legal entities under Celsius’s umbrella should be substantively consolidated or their corporate separateness otherwise ignored. Consequently, by using the term “Celsius,” the Examiner is not taking a position that these separate legal entities should be treated as one entity and uses this term only for the ease of the reader.

¹¹¹ The Future of Consumer Credit, Celsius (2017), <https://web.archive.org/web/20171003170140/https://celsius.network/> (last visited January 29, 2023) (“Celsius is developing a new global platform that utilizes the global blockchain technology to enable peer to peer lending.”); SOSA NYC presentation, Facebook (October 23, 2017), <https://www.facebook.com/CelsiusNetwork/videos/2054916154737103/> (last visited January 29, 2023).

by Celsius),¹¹² from which Celsius managed the deployment of those assets.¹¹³ Stated differently, Celsius shifted away from a platform to allow borrowers and lenders to conduct transactions directly with each other. Instead, the platform allowed customers to “lend” crypto assets to Celsius, which Celsius deployed to generate revenue for Celsius; in return, Celsius offered its customers weekly interest (also referred to as “rewards”).¹¹⁴

Approximately one month after it was incorporated, in March 2018, Celsius launched its platform.¹¹⁵ In June 2018, Celsius released its mobile application.¹¹⁶

D. Celsius’s Initial Product Offerings.

Once launched, Celsius described its business model as a collateralized lending business that began by offering dollar loans collateralized by crypto assets and later included coin loans to approved institutions.¹¹⁷ From its inception, Celsius’s core financial product and the focus of its marketing was the

¹¹² Tech Paper, Celsius (February 11, 2018), <https://www.readkong.com/page/tech-paper-3008803> (last visited January 29, 2023), at 24 (describing the process as one in which “Crypto asset holder transfers coins from their wallet into a Celsius wallet”).

¹¹³ Celsius used the terms “deploy” and “deployment” to refer to the investments it made with crypto assets.

¹¹⁴ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 5.

¹¹⁵ *Declaration of Alex Mashinsky, Chief Executive Officer of Celsius Network LLC, In Support of Chapter 11 Petitions and First Day Motions* dated July 14, 2022 [Dkt. 23], at ¶ 7.

¹¹⁶ *Id.* at ¶ 37.

¹¹⁷ Celsius Whitepaper, CEL_EXAM-00158762, at 4 (“Celsius’ goal is to allow its members to use their crypto holdings as collateral in order to secure low interest loans in dollars.”).

“Earn” program.¹¹⁸ Under this program, Celsius customers could “[d]eposit coins” onto Celsius’s platform and “[e]arn interest” on their deposited crypto.¹¹⁹ In turn, Celsius explained that it would deploy customer deposits¹²⁰ or collateral—through further loans, investments, or on exchanges—to generate yield, aiming to cover the rewards it owed to customers and its operational costs.¹²¹

Celsius also offered its customers a “loan” program, through which users could obtain a loan in fiat currency or stablecoins against crypto assets reflected in their Celsius accounts.¹²² It offered loans in six-month increments, the shortest period being six months and the longest 60 months.¹²³ Celsius made these loans on a by-asset basis, meaning that each loan would be secured by one kind of crypto asset.¹²⁴ Crypto assets locked as collateral did not earn rewards, and Celsius could deploy those assets in the same manner as any other

¹¹⁸ Examiner Interview of Katie Osadetz (Senior Manager Product Planning – Celsius, November 16, 2022); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

¹¹⁹ Home, Wayback Machine, Celsius (June 9, 2018), <https://celsius.network/> (last visited January 29, 2023).

¹²⁰ This Final Report uses the term “deposits” to refer to customer transfers of crypto assets from wallets outside of Celsius’s control to wallets within Celsius’s control.

¹²¹ Real Vision Finance, @CelsiusNetwork Yield Generation & Counterparty Risk, YouTube (February 22, 2022), <https://www.youtube.com/watch?v=5J8cCbt2Umo>.

¹²² Celsius Loan FAQs, Celsius (May 3, 2021), <https://celsiusnetwork.medium.com/celsius-loan-faqs-a3b0aea5b943> (last visited January 29, 2023).

¹²³ Crypto Loans, Celsius, <https://celsius.network/crypto-loans> (last visited January 29, 2023).

¹²⁴ Celsius Loan FAQs, Celsius (May 3, 2021), <https://celsiusnetwork.medium.com/celsius-loan-faqs-a3b0aea5b943> (last visited January 29, 2023).

customer assets in the Earn program.¹²⁵ Just as Celsius promoted the high rewards in its Earn program, it advertised the low interest rates in its customer loan program.¹²⁶ To incentivize the use of its native CEL token, customers who used their CEL tokens as collateral for retail loans received even lower interest rates than those who provided other crypto assets as collateral.¹²⁷

To generate yield on customer deposits and collateral, Celsius deployed the deposits and collateral in various ways. Mr. Mashinsky told the Examiner that Celsius's initial focus was on retail lending, not institutional lending.¹²⁸ But Patrick Holert, former Celsius Financial Risk Officer and current Chief Operating Officer of Celsius Mining, said that the "bread and butter" of Celsius's deployment—through mid-2020—was to lend crypto assets to institutional

¹²⁵ *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC, Providing Terms Of Use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393] at Ex. A2-A-8 ("How Rewards are Calculated and Earned" and "Consent to Celsius' Use of [Your] Digital Assets").

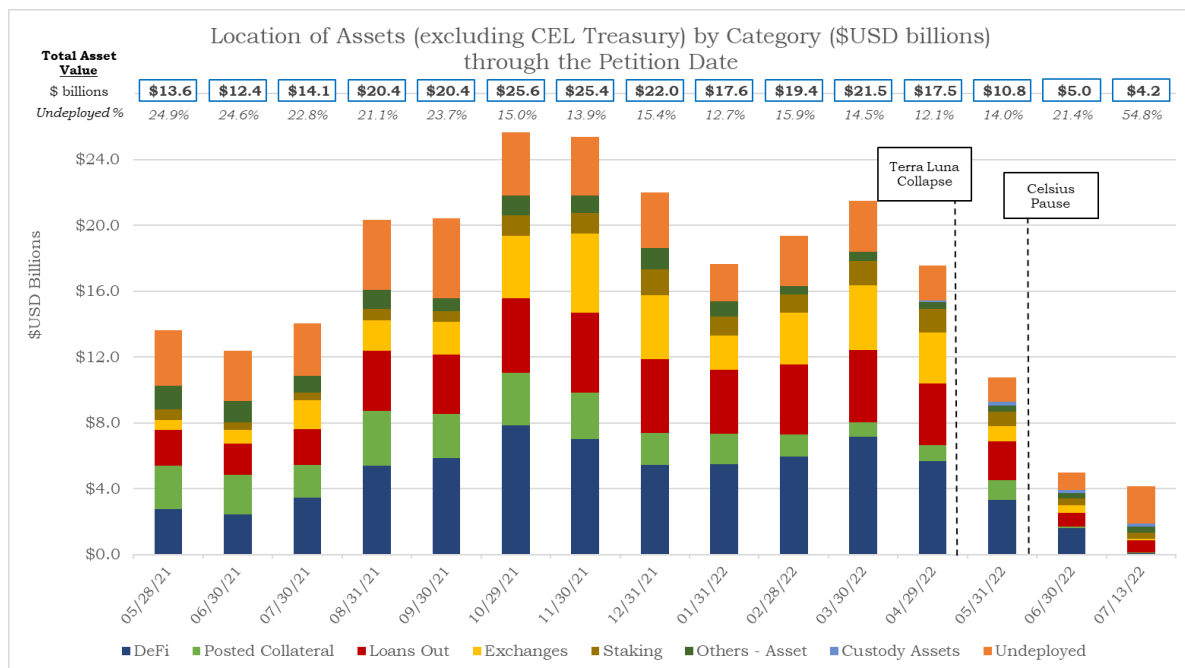
¹²⁶ Celsius, Use your crypto to borrow [] at 1%, Email (April 28, 2021), CEL-UCC-00003076 ("Your crypto is hard at work earning yield . . . you can also use our crypto to borrow dollars or stablecoins starting at 1% APR. That means you get cash in hand today without cashing out your crypto!"); Celsius, "How is Celsius making money on 1% loans?", Email (May 31, 2020), CEL-UCC-00104568; Crypto Loans, Celsius, <https://celsius.network/crypto-loans> (last visited January 29, 2023) ("Borrow starting at only 0.1% APR.").

¹²⁷ Crypto Loans, Celsius, <https://celsius.network/crypto-loans> (last visited January 29, 2023) (explaining, in response to the question, "What benefits do I get paying off my loan with CEL tokens?,"—that "if you pay interest on your loans with CEL tokens, you will receive up to a 30% discount on all of your interest payments"); Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2022).

investors.¹²⁹ As time progressed and market opportunities changed, Celsius expanded its deployments into areas it believed would return a higher yield: it allocated crypto for trading strategies at exchanges such as Bitfinex and FTX, and it placed crypto into DeFi and staking protocols.¹³⁰ Celsius also formed Celsius Mining to pursue a Bitcoin mining operation. To fund business operations and retail loans, Celsius borrowed dollars and stablecoin using crypto assets as collateral.¹³¹

FIGURE 4: CELSIUS CRYPTO ASSETS BY CATEGORY (\$)



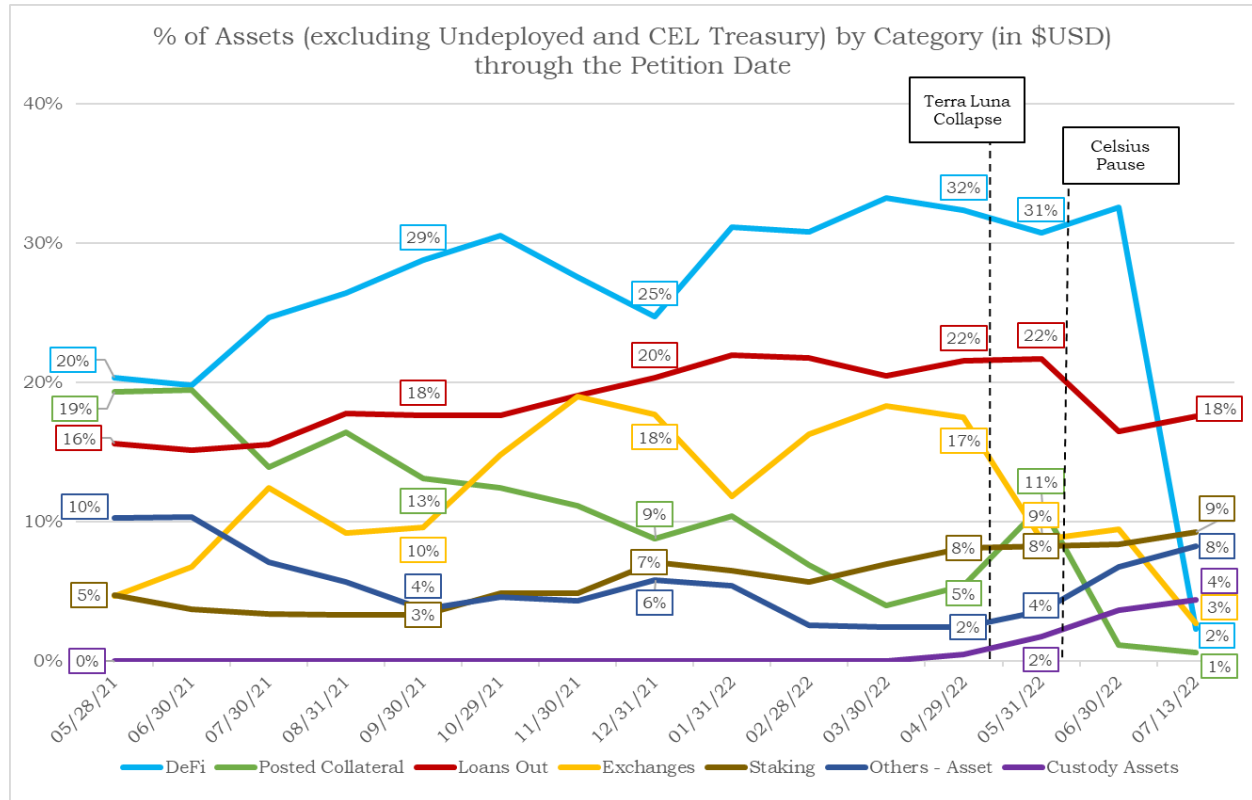
Note: This chart reflects the allocation of Celsius's crypto assets by category of use, in dollars, from May 2021 through the Petition Date.

¹²⁹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

¹³⁰ Celsius Freeze Report (July 11, 2022).

¹³¹ Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

Figure 5: CELSIUS CRYPTO ASSETS BY CATEGORY (%)



Note: This chart reflects the allocation of Celsius’s crypto assets by category of use, by percentage, from May 2021 through the Petition Date.

Above all, Mr. Mashinsky prioritized growth, and he and others at Celsius frequently shared with customers their goal of reaching 100 million Celsius customers.¹³² Jason Perman, Celsius’s former Vice President of Treasury who joined the company in 2021, told the Examiner that Mr. Mashinsky’s singular

¹³² Celsius, AMA with Alex Mashinsky, CEO of Celsius, YouTube (March 8, 2018), <https://youtu.be/YQNdQXxPNQE>; @CelsiusNetwork, Twitter (August 24, 2021) (“At the start, we set a goal to bring the next 100 million people into #crypto”); @CelsiusNetwork, Twitter (September 24, 2021) (“Do you want to help bring the next 100 million people to crypto? Learn more about the #Celsius Ambassador program”); @CelsiusNetwork, Twitter (October 11, 2021) (same); @CelsiusNetwork, Twitter (October 21, 2021) (same); @Mashinsky, Twitter (April 9, 2018) (“The only thing on my mind every morning: how do we bring the next 100 million people to Crypto.”).

focus on growth led him to reject recommendations to boost profit that Mr. Mashinsky thought might jeopardize the number of customers or the amount of their deposits.¹³³ In early 2022, a Treasury team internal assessment noted that “Celsius has taken the position that it wants to grow assets ahead of its own profitability.”¹³⁴ Documents and interviews reflect a growing tension between growth and profitability—and internal disagreements about whether and how to adjust the business model—that became more acute with the arrival of the 2022 bear market and the crypto winter.

III. The CEL Token.

A. Celsius’s Initial Coin Offering.

Celsius conducted an initial coin offering (“ICO”) of its CEL token between March 16 and March 23, 2018.¹³⁵ Celsius used the proceeds it raised from the ICO to fund its business.¹³⁶

¹³³ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

¹³⁴ Treasury Team, Celsius Fact Sheet, Internal Company Document (February 22, 2022), CEL-EXAM-00052218.

¹³⁵ Celsius, ICO Drops, <https://icodrops.com/celsius/> (last visited January 29, 2023); Celsius Network (CEL) ICO, CoinCodex, <https://coincodex.com/ico/celsius-network/> (last visited January 29, 2023).

¹³⁶ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

1. The Whitepaper.

Prior to the March 2018 ICO, Celsius marketed itself and CEL by releasing a whitepaper (the “Whitepaper”).¹³⁷ The Whitepaper has remained on Celsius’s website (in different iterations) since then.¹³⁸

The Whitepaper detailed Celsius’s mission, team, and business model. Celsius would “allow members to use coins as collateral to get a loan in dollars, and . . . lend their crypto to earn interest on deposited coins (when they’re lent out).”¹³⁹ The Whitepaper emphasized that customers could receive high interest rates for loaning crypto assets to Celsius:

By depositing coins on the Celsius Network, crypto asset holders will be able to earn up to 9% interest for their lent coins. We plan to offer a large array of lending options, from one-day to one-year contracts, all with highly competitive interest rates. With Celsius, members will be able to easily earn interest on their crypto assets the same way they earn on the savings in the bank - but with much better rates.¹⁴⁰

According to the Whitepaper, customers could expect to receive rewards “of at least 5% annual interest on any lent crypto currencies,” which it would pay in the following way: “Celsius has a non-for-profit model where proceeds are used to cover all costs and membership growth, while most [proceeds] are distributed

¹³⁷ Celsius, Whitepaper (pre-March 2018), CEL_EXAM-00158762. This undated version of the Whitepaper was released pre-March 2018, before the ICO. Celsius also released a “Tech Paper” dated February 11, 2018. Tech Paper, Celsius (February 11, 2018), <https://www.readkong.com/page/tech-paper-3008803> (last visited January 29, 2023).

¹³⁸ Celsius, Whitepaper, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023).

¹³⁹ *Id.* at 2.

¹⁴⁰ *Id.* at 4.

back to the members community.”¹⁴¹ The Whitepaper represented that Celsius “will not charge account or transaction fees.”¹⁴²

The Whitepaper explained the purpose and importance of CEL, describing it as “the backbone of the Celsius Network”¹⁴³ and as “key for users who wish to lend or borrow.”¹⁴⁴ According to the Whitepaper, CEL served two primary purposes: first, it allowed customers “to apply for dollar loans with cryptocurrencies as collateral” at discounted interest rates;¹⁴⁵ and second, it allowed customers to “get interest rewards on cryptocurrencies lend[ed] [sic]” with the opportunity (based on the amount of CEL earned) to “achieve[] seniority in the platform which will impact the interest rate gained.”¹⁴⁶ On the last point, the Whitepaper described CEL as the means by which customers would receive interest for the crypto assets they deposited onto the Celsius platform.¹⁴⁷ Mr. Mashinsky told the Examiner that CEL “was like airline miles,” functioning as an “incentive” to use Celsius rather than another platform.¹⁴⁸

The Whitepaper’s “Legal Considerations, Risks, and Disclaimer – Summary” section informed potential owners of CEL that “[y]ou should not

¹⁴¹ *Id.* at 9-10.

¹⁴² *Id.* at 9.

¹⁴³ *Id.* at 3.

¹⁴⁴ *Id.* at 10.

¹⁴⁵ *Id.* at 3.

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.* at 10.

¹⁴⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

purchase [CEL] for investment purposes. Such tokens are not designed for investment purposes and should not be considered as a type of investment.”¹⁴⁹ According to the Whitepaper, the interest that Celsius would pay to customers in the form of CEL would be generated from fees “collected from institutional traders who use the assets pool.”¹⁵⁰ Celsius explained that it would generate revenue by exploiting the “greed” of traditional financial institutions, most of which Celsius asserted “still don’t get cryptocurrency.”¹⁵¹ As a result, according to Celsius, traditional financial institutions “want to short the market because they’re blinded by being so late to the party on this one” and “are willing to pay high fees” to borrow crypto assets as part of a shorting strategy.¹⁵² In this way, Celsius explained, it was building

[a] dual-sided system [that] will create a supply and demand cycle between institutional traders, such as hedge funds, who seek to borrow coins and require the CEL token to pay the fees and commissions;¹⁵³ and the crypto

¹⁴⁹ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 35.

¹⁵⁰ *Id.* at 10.

¹⁵¹ *Id.* at 5.

¹⁵² *Id.* at 5.

¹⁵³ Similarly, Celsius’s Tech Paper stated that “[t]he Celsius economy is based on the Celsius Degree Token (CEL), which is bought by borrowers and used to pay fees to the lender community and Celsius[]” and that these “[b]orrowers, who are mostly accredited investors, crypto funds and hedge funds are required to buy CEL tokens to enable trades.” Tech Paper, Celsius (February 11, 2018), <https://www.readkong.com/page/tech-paper-3008803> (last visited January 29, 2023), at 5, 27.

holders around the world who receive these tokens as interest on their lent coins.¹⁵⁴

As customers deposited their crypto assets on Celsius's platform and earned rewards in CEL, Celsius told its customers that it would obtain the CEL necessary to pay rewards by releasing CEL from Celsius's "internal cache" or buying CEL in the market using its profits.¹⁵⁵ Celsius told customers that this process would produce a self-sustaining "flywheel"¹⁵⁶ that worked as follows: its marketing efforts would generate users and bring more assets onto the Celsius platform,¹⁵⁷ which, in turn, would produce more CEL rewards for customers. Celsius would use its profits to buy back CEL in the market, thereby increasing overall demand for, and thus price of, the token. Price increases would lead to marketing opportunities, and so on.¹⁵⁸

In Mr. Mashinsky's words, the flywheel was a "simple" way to "make a connection between the different steps in the process: users on the platform, they put assets on the platform, more users and assets results in more deployment, that results in more yield, that usually turns back and gets users

¹⁵⁴ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 11; Tech Paper, Celsius (February 11, 2018), <https://www.readkong.com/page/tech-paper-3008803> (last visited January 29, 2023), at 4 ("Celsius will generate income for coin holders by allowing hedge funds and crypto funds[] to create short positions on cryptocurrencies using actual coins borrowed from the Celsius pool of lenders. The top 20 crypto-assets will be accessed and charged fees for the shorting or purchased for leveraged margin trades.").

¹⁵⁵ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 34.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

to talk about it, [which] results in more users, more assets, more yield, and so on.”¹⁵⁹ Mr. Mashinsky said the concept was “inherent in the project from day one.”¹⁶⁰

The Whitepaper illustrated this self-sustaining flywheel as follows:¹⁶¹



The Whitepaper advertised that Celsius would initially generate 700 million CEL tokens,¹⁶² a number Mr. Mashinsky characterized to the Examiner as a “random number.”¹⁶³ Of that amount, Celsius planned to offer 325 million tokens for sale through private presales and the ICO.¹⁶⁴ Any unsold

¹⁵⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Office – Celsius, January 5, 2023).

¹⁶⁰ *Id.*

¹⁶¹ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 34.

¹⁶² *Id.* at 12.

¹⁶³ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹⁶⁴ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 12. While the Whitepaper did not specify why Celsius planned to sell only half of the CEL tokens, this strategy is a recognized approach for an ICO to avoid flooding the market. Gan, Jingxing (Rowena), Tsoukalas, Gerry, &

tokens of the 325-million allocation “w[ould] be burned after the token sale.”¹⁶⁵ In this context, “burning” refers to the practice of permanently removing tokens from circulation, typically by transferring them to a wallet (a “burn address”) from which they cannot be recovered.¹⁶⁶ This reduces overall supply in an attempt to increase the value of the remaining tokens.¹⁶⁷ Celsius also planned to place an additional 50 million CEL in a smart contract subject to release if the price of CEL hit certain benchmarks over a specified period of time.¹⁶⁸ The Whitepaper indicated that the remaining 325 million CEL would be held in Celsius’s Treasury.¹⁶⁹

2. Promoting CEL.

In addition to the Whitepaper, and notwithstanding Mr. Mashinsky’s analogy of CEL to “airline miles,”¹⁷⁰ Celsius touted CEL as a proxy for Celsius’s value. Mr. Mashinsky made this claim during livestream conversations in which he participated (referred to as “Ask Mashinsky Anything” or “AMAs,” and

Netessine, Serguei, Initial Coin Offerings, Speculation and Asset Tokenization, Management Science, Vol. 67, No. 2 (June 29, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361121, at 14, 14 n.7 (finding that “it is never optimal for the firm to sell more than half of its tokens ($m/2$) in the ICO[]”).

¹⁶⁵ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 12.

¹⁶⁶ Glossary of Key Crypto Terms and Abbreviations, Appendix 1.

¹⁶⁷ George, Benedict, What Does It Mean to Burn Crypto?, CoinDesk (January 26, 2022), <https://www.coindesk.com/learn/what-does-it-mean-to-burn-crypto/> (last visited January 29, 2023); Appendix 1.

¹⁶⁸ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 12.

¹⁶⁹ *Id.*

¹⁷⁰ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

discussed further below in Part Two, Section VI.¹⁷¹ For example, before the ICO, during a March 8, 2018 AMA, Mr. Mashinsky said:

We are focused on enabling the community, on creating a large community because everything we do is measured by the token. The token price goes up, our entire compensation is the token. So our job is to do everything we can to increase the price of the token as long as it's in the best interest of the community."¹⁷²

Mr. Mashinsky added, "The payment [to Celsius's customers] is made with our tokens, with the CEL tokens, which represents a transfer of value."¹⁷³

On June 14, 2018, shortly after the ICO, Mr. Mashinsky answered an AMA question regarding listing CEL on exchanges:

Our wheels have started turning and the wheels that generate demand both generate income and generate demand for the CEL token. We want those wheels to spin faster and faster. When we feel that the wheels are spinning fast enough to the point where organic demand for the token

¹⁷¹ Celsius, AMA with Alex Mashinsky, CEO of Celsius, YouTube (March 8, 2018), <https://youtu.be/YQNdQXxPNQE>; Celsius, Alex Mashinsky AMA 6/14/2018, YouTube (June 14, 2018), <https://www.youtube.com/watch?v=P89WfneySwE>.

¹⁷² Celsius, AMA with Alex Mashinsky, CEO of Celsius, YouTube (March 8, 2018), <https://youtu.be/YQNdQXxPNQE>.

¹⁷³ *Id.*

represents one of the biggest demand generators out there, we feel comfortable going on exchanges.¹⁷⁴

A constant theme of the AMAs was promoting CEL and “deflationary” economics.¹⁷⁵ Mr. Mashinsky also made claims regarding the relationship between CEL and Celsius’s value.¹⁷⁶

3. The Results Of The ICO And The Private Sales.

The public ICO took place between March 16 and March 23, 2018.¹⁷⁷

Celsius offered CEL tokens at a price of \$0.20 for tokens purchased through the

¹⁷⁴ Celsius, Alex Mashinsky AMA 6/14/2018, YouTube (June 14, 2018), <https://www.youtube.com/watch?v=P89WfneySwE>.

¹⁷⁵ During the AMAs that took place prior to the Pause in 2022, the Flywheel and CEL utility were discussed in at least 13 out of the 22 AMAs presented: on January 7, 2022, January 14, 2022, January 21, 2022, February 4, 2022, February 11, 2022, February 25, 2022, March 4, 2022, March 11, 2022, March 18, 2022, April 1, 2022, April 22, 2022, April 29, 2022, and May 6, 2022.

¹⁷⁶ Celsius, Celsius Network AMA – Ask Mashinsky Anything!, YouTube (November 26, 2019), https://www.youtube.com/watch?v=H1n5g7uJyvQ&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSfq_5oV&index=55 (“The yield on CEL is an indication of profitability or how well is Celsius doing.”); Celsius, Celsius Network Team AMA – Thursday, July 2, 2020, YouTube (July 2, 2020), <https://www.youtube.com/watch?v=Ym1EjbThjVk> (“Celsius has a very simple business model that says we will give the most to the community, through that we will have the most deposits. With those deposits we will earn the most interest. And our 20%, what we keep, will be worth more than those other guys because if we have more coins and we do more deployment, its going to make the company more valuable, if its more valuable, the token value will increase, and so on.”); #BLOCKCON, Alex Mashinsky: Peer to Peer Lending, YouTube (November 13, 2017), <https://www.youtube.com/watch?v=ujBLuMDpnBs&t=4s>; BGN – Blockchain Global News, CELSIUS – The Credit Coin | Founder & CEO Alex Mashinsky | Fintech World’s ICO Road Show, YouTube (February 22, 2018), <https://www.youtube.com/watch?v=mBHCu80g-BA>; Cryptospace conference, Alex Mashinsky. What will the ICO survivors look like, YouTube (December 22, 2017), <https://www.youtube.com/watch?v=IKj6nc0Wz5k&t=822s>.

¹⁷⁷ Celsius, ICO Drops, <https://icodrops.com/celsius/> (last visited January 29, 2023); Celsius Network (CEL) ICO, CoinCodex, <https://coincodex.com/ico/celsius-network/> (last visited January 29, 2023).

private sale and \$0.30 for tokens purchased during the ICO.¹⁷⁸ Celsius also offered limited time bonuses.¹⁷⁹ For example, for a period of time, Celsius offered a 40% bonus for CEL purchases up to \$5 million (*i.e.*, in a private sale, a purchaser would receive, in exchange for \$5 million, 25 million CEL at \$0.20 plus a 10 million CEL bonus).¹⁸⁰

Although Celsius publicly represented that it sold 325 million CEL, it did not.¹⁸¹ In fact, Celsius sold only 203 million CEL in its ICO and the private sales combined.¹⁸² As a result, Celsius raised only \$32 million from the ICO and private sales rather than the anticipated (and announced) \$50 million.¹⁸³

On April 11, 2018, Celsius minted 700 million CEL (650 million plus the 50 million placed in a smart contract).¹⁸⁴ Between April 11 and April 27, 2018, it distributed 203 million CEL to purchasers. According to Mr. Mashinsky,

¹⁷⁸ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 13.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Harrell, Ashley, Slack (March 1, 2019), CEL-UCC-00182002.

¹⁸² Token, Celsius, Etherscan, <https://etherscan.io/token/0xaae6fe48e54f431b0c390cfaf0b017d09d42d#code> (last visited January 29, 2023).

¹⁸³ Celsius Network Ltd. (Israel) and Celsius Network Ltd. (UK) General Ledgers.

¹⁸⁴ Celsius's statements and records are inconsistent concerning the actual amount of ICO proceeds raised, however a letter from Celsius's counsel indicates \$32 million was raised. Sikora, John, In the Matter of Certain Digital Asset Lending Platforms, Letter (August 23, 2021), CEL-UCC-00022923, at 2. Celsius's Lender Presentation from May 2022 states that \$50 million was raised in the ICO. Celsius, Lender Presentation (May 2022), CEL-UCC-00502909. ICO data provided by Celsius to the Examiner indicates \$31.7 million was raised. Celsius's general ledger reflects \$39.7 million was received. Celsius Network Ltd. (UK) general ledger.

“anything not sold was burned.”¹⁸⁵ This did not occur.¹⁸⁶ After the distributions, Celsius was left with approximately 121.33 million unsold CEL, plus 325 million CEL in its Treasury. The 121.33 million unsold CEL consisted of: (i) 1.21 million CEL, the sale of which had been initiated but not completed or was unwound, because the purchasers did not meet the accredited investor standard; (ii) 3.12 million CEL that had never been sold; and (iii) 117 million CEL set aside pursuant to an option agreement with Mashinsky-owned entity AM Venture Holdings, Inc. (“AM Venture”) that never closed.¹⁸⁷

In March 2019, Celsius burned the 4.33 million CEL that were not sold or were returned by purchasers who were not accredited investors. But it did not burn the 117 million tokens subject to the AM Venture’s option.¹⁸⁸ Ashley Harrell, former Vice President of Finance and Director of Operations, concluded that, by not following through on a commitment to burn unsold CEL (including those marked for AM Venture), Celsius was “non-complian[t] with our own whitepaper.”¹⁸⁹

Celsius did not disclose that its ICO was not fully funded. Prior to the burn, Celsius employees debated whether to publicly disclose this information.

¹⁸⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹⁸⁶ Harrell, Ashley, PLEASE READ: Transparency of CEL holdings/wallet holders, Email (August 22, 2019), CEL-UCC-00000127.

¹⁸⁷ Celsius, Slack (March 1, 2019), CEL-UCC-00182002.

¹⁸⁸ *Id.*

¹⁸⁹ Harrell, Ashley, PLEASE READ: Transparency of CEL holdings/wallet holders, Email (August 22, 2019), CEL-UCC-00000127.

Former Chief Technology Officer Nuke Goldstein expressed concern that doing so would negatively affect customers' perception of Celsius.¹⁹⁰ Some feared public disclosure was a "bad idea" because "[t]he public believes the ICO was fully funded and all tokens purchased. If they find out now there were unsold [tokens] they will be upset."¹⁹¹

4. The AM Venture Option.

In advance of the ICO, Celsius and Mr. Mashinsky's company, AM Venture, agreed that AM Venture would have the option to purchase any unsold CEL at \$0.20 per token, up to a total of \$18 million, plus a 30% bonus.¹⁹² AM Venture subsequently exercised this option. Specifically, AM Venture agreed to buy 117 million CEL for \$18 million.¹⁹³ Mr. Mashinsky said that he agreed to the purchase because he believed it was a "good investment," although, in fact, AM Venture never completed the purchase after exercising its option.¹⁹⁴ When the Examiner asked Mr. Mashinsky why he did not close this transaction, he asserted the attorney-client privilege and declined to answer.¹⁹⁵

¹⁹⁰ Goldstein, Nuke, Slack (March 1, 2019), CEL-UCC-00182002.

¹⁹¹ Patchen, Aaron, Slack (March 1, 2019), CEL-UCC-00182002.

¹⁹² Harrell, Ashley, Fully Executed Token Sale Agreement AM Venture Holdings.pdf (May 28, 2019), CEL-UCC-00000102; Celsius Network Limited, Loan Agreement among AM Venture Holdings, Inc., Celsius Network Limited, and Alex Mashinsky, Executed Agreement (January 17, 2020), CEL-UCC-00023496, 2.

¹⁹³ Celsius Token Sale Agreement with AM Venture Holdings, Inc., Executed Agreement (March 28, 2018), CEL-UCC-00023443, at 2.

¹⁹⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹⁹⁵ *Id.*

Instead of burning the approximately 117 million in tokens that AM Venture agreed to purchase but never bought, on August 9, 2019, Celsius segregated them in a blockchain wallet that it maintained through the Petition Date.¹⁹⁶ In January 2020, Celsius and AM Venture attempted to paper over AM Venture's failure to close on its purchase agreement by entering into a loan agreement.¹⁹⁷ Under the loan agreement, AM Venture would borrow \$18 million from Celsius at 6% annual interest.¹⁹⁸ AM Venture would then allow Celsius to offset AM Venture's obligation to purchase \$18 million worth of CEL.¹⁹⁹ To secure the loan, AM Venture would pledge the 117 million in CEL that AM Venture had agreed to, but did not purchase, and Mr. Mashinsky would pledge his stock in Celsius Network Inc.²⁰⁰ Upon receiving the executed loan agreement, Ms. Harrell was perplexed that the loan would be secured by CEL and not AM Venture owned: "Like I have said repeatedly, he [Mr. Mashinsky] can't take a loan with 117M CEL as collateral without first purchasing those tokens."²⁰¹

¹⁹⁶ Celsius Security Team, AMV Tokens Research Report, Internal Company Document, CEL-UCC-00000124 (containing several wallets that are not included in the Celsius-provided wallet list). Mr. Mashinsky described this as "returning" the tokens to Celsius, although he also acknowledged he never took possession of the coins. Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹⁹⁷ Celsius Network Limited, Loan Agreement among AM Venture Holdings, Inc., Celsius Network Limited, and Alex Mashinsky, Executed Agreement (January 17, 2020), CEL-UCC-00023496.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 9.

²⁰¹ Harrell, Ashley, AMV loan agreement, Email (December 20, 2019), CEL-UCC-00023460.

This arrangement between Celsius and AM Venture was terminated a few months later.²⁰² The Celsius Board of Directors met on April 7, 2020 to decide what to do with the unsold tokens.²⁰³ The Board determined that “the Company does not currently need the [CEL] tokens on its balance sheet,” and therefore resolved “to keep the AMV CEL tokens in the Company’s treasury in a segregated account and only use the CEL tokens in times of great financial need.”²⁰⁴ The Board also required that “any transaction involving these tokens must be specifically approved by the Board.”²⁰⁵

Several months later, on December 31, 2020, Celsius booked the 117 million CEL on its balance sheet as Auxiliary Treasury at \$5.46/CEL for a total value of \$638,820,000.²⁰⁶ Celsius excluded CEL revenue from income on its financial statements.²⁰⁷ Celsius, however, continued to reflect these CEL (as well as the 325 million CEL in Treasury that had not been offered for sale in the ICO) and valued them at CEL’s mark-to-market price in financial analyses

²⁰² Full Minutes of the Board of Directors of Celsius Network Ltd. (a UK Limited Company), Internal Company Document (April 7, 2020), CEL-UCC-00035326, at 5; Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022).

²⁰³ Full Minutes of the Board of Directors of Celsius Network Ltd. (a UK Limited Company), Internal Company Document (April 7, 2020), CEL-UCC-00035326, at 5.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 5-6.

²⁰⁶ This transaction was reflected by an entry (on the Celsius UK entity) under “CEL Tokens - Aux. Treasury.”

²⁰⁷ Celsius Network Ltd. (UK) General Ledger.

submitted to third parties, such as potential investors.²⁰⁸ Celsius now refers to the wallet holding the 117 million CEL as “CEL Loan Collateral.”²⁰⁹

5. Initial Efforts To Support CEL.

Beginning shortly after its launch in March 2018, Celsius engaged in several efforts to promote CEL to potential purchasers in the secondary market (*i.e.*, the purchase or sale of CEL tokens after their initial distribution from the ICO). Celsius also sought to increase adoption of CEL by its customers and to support the token’s market value.²¹⁰ Mr. Mashinsky told the Examiner that Celsius tried to come up with more “use cases” for CEL to, in turn, increase its value.²¹¹ But, as Mr. Mashinsky described it, the “main purpose by far was the airline mile business model,” which left him “very jealous of Binance and others that created a whole ecosystem around their tokens.”²¹²

A core pillar of the strategy to support CEL’s market value involved Celsius purchasing CEL in the secondary market and advertising those purchases as a benefit to all CEL holders. On June 14, 2018, Mr. Mashinsky explained during an AMA that CEL was a “utility token so for us the utility is the transfer value between participants inside our network and our ability to effectively use income

²⁰⁸ Celsius, Celsius Network Investment Opportunity, Presentation (June 2022), CEL-UCC-00006818, at 11. As will be discussed in more detail *infra*, Celsius’s treatment and calculation of CEL made a significant impact on Celsius’s balance sheet.

²⁰⁹ Celsius Network Ltd. (UK) General Ledger.

²¹⁰ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

²¹¹ *Id.*

²¹² *Id.*

that the company makes to buy back tokens from the market which creates scarcity or deflationary cycle which drives up the price of the remaining tokens.”²¹³ In other words, Mr. Mashinsky claimed, by using its profits to buy back CEL tokens, Celsius would reduce CEL’s market supply and increase its price.

The Examiner requested records reflecting Celsius’s CEL purchases in 2018 through 2022, but Celsius did not provide this information. The Examiner’s own blockchain analysis, however, determined that Celsius transferred at least 19.9 million CEL from secondary markets to its wallets in 2018²¹⁴ and at least 113.2 million CEL in 2019.²¹⁵ Mr. Mashinsky advertised this practice as proof of the soundness of what Celsius termed CEL’s “tokenomics”²¹⁶—or what one Celsius employee later explained as Celsius conducting its own “market making.”²¹⁷ Connor Nolan, Head of Institutional Lending and Head of Coin Deployment, told the Examiner that the reason Celsius bought its own CEL was to “push the price [of CEL] higher.”²¹⁸ Mr. Mashinsky acknowledged to the Examiner that Celsius was active in making the market but asserted that Celsius

²¹³ Celsius, Alex Mashinsky AMA 6/14/2018, YouTube (June 14, 2018), <https://www.youtube.com/watch?v=P89WfneySwE>.

²¹⁴ Appendix 6. Summary of CEL Token Purchases.

²¹⁵ Appendix 6. Summary of CEL Token Purchases.

²¹⁶ @Mashinsky, Twitter (August 23, 2018) (replying to another Twitter user: “[t]hat’s because most tokens don’t token economics that actually work, but ours does, which is why we’ve bought back almost 2m of our CEL tokens in the past few months[.]”).

²¹⁷ Harrell, Ashley, CEL Buybacks/Interest Paid/Treasury Redemptions, Email (April 22, 2020), CEL-UCC-00067828.

²¹⁸ Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023).

viewed “avoiding large fluctuations of value” to be a “service” to the Celsius community. He added that if a customer “hold[s] 1 million tokens, you want to know there is going to be somebody on the other side, so it’s also trust in the token.”²¹⁹

Celsius also undertook a number of efforts to encourage users to earn rewards in and hold CEL, including by offering higher reward rates for CEL than other crypto assets.²²⁰ Customers could also earn higher interest on other crypto assets based on how much CEL they held in their accounts (*i.e.*, customers could earn higher interest rates for BTC if they held CEL),²²¹ providing further incentive for customers to maintain balances in CEL on the Celsius platform. In August 2019, Celsius augmented this benefit by announcing that interest on CEL would compound.²²² At the same time, Mr. Mashinsky was beginning to sell or swap out significant amounts of CEL. In 2019, Mr. Mashinsky sold at least 3.6 million CEL.²²³

²¹⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

²²⁰ @Mashinsky, Twitter (August 9, 2019) (“You do not need CEL to earn interest. You earn more with CEL so let’s stop FUDing the best plan out there. @CelsiusNetwork Celsius paid more BTC to more HODLers than ALL the other guys put together. You can quote me on that.”).

²²¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2022) (“The token was a way to get more if you want to earn more.”); Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023), at 3 (indicating that “[i]n the future, the CEL token will have additional utilities including: . . . achieving seniority in the platform which will impact the interest rate gained[]”).

²²² @Mashinsky, Twitter (August 31, 2019) (“For all the @CelsiusNetwork fans who waited for \$CEL to pay interest, well we have done better than that. It now compounds as well. One more reason to #Unbankyourself now.”).

²²³ Appendix 7. Summary of A. Mashinsky CEL Token Activity (On-Chain).

Despite these efforts, the price of CEL languished throughout the market-wide crypto winter that lasted from mid-2018 into 2020. While CEL had been sold for a price of \$0.20 in the private sale component of the ICO, it traded well below that price—vacillating between \$0.02 and \$0.18 for almost two years—until May 2020.²²⁴ Ms. Harrell, stated that during this period, CEL felt “meaningless.”²²⁵

B. The Increasing Price Of CEL Masked Problems.

From 2020 through 2021, the price of CEL increased exponentially, despite—as will be discussed in detail below—Celsius’s losses during that time (many of which Celsius did not publicly disclose contemporaneously). The increase in the price of CEL coincided with a general increase in crypto asset prices between 2020 and 2021, with BTC hitting \$68,000 in November 2021.²²⁶

As the table below shows, in mid-March 2020, CEL traded at just over \$0.05.²²⁷ But by early June 2021, CEL peaked at over \$8.01, a 14,751% increase. This equated to an increase in “market capitalization” from \$18.4 million in March 2020 to \$1.85 billion in June 2021.²²⁸

²²⁴ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius> (last visited January 29, 2023).

²²⁵ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

²²⁶ Levy, Ari & Sigalos, MacKenzie, Crypto peaked a year ago – investors have lost more than \$2 trillion since, CNBC (November 11, 2022), <https://www.cnbc.com/2022/11/11/crypto-peaked-in-nov-2021-investors-lost-more-than-2-trillion-since.html> (last visited January 29 2023).

²²⁷ Celsius USD (CEL-USD), Yahoo Finance, <https://ca.finance.yahoo.com/quote/CEL-USD/history?period1=1512518400&period2=1670284800&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true> (last visited January 29, 2023).

²²⁸ *Id.*

FIGURE 6: CEL PRICES (MARCH 2020 – JUNE 2021)²²⁹

Date	Open	Close	Market Cap
Mar 13, 2020	0.05396	0.07708	18,412,493
Apr 13, 2020	0.08192	0.08225	19,654,400
May 13, 2020	0.11503	0.12127	28,966,825
June 13, 2020	0.25767	0.25012	59,745,473
July 13, 2020	0.37342	0.39066	93,313,456
Aug 13, 2020	0.41324	0.41980	100,274,351
Sept 13, 2020	0.52114	0.49866	119,110,907
Oct 13, 2020	1.34698	1.28506	306,954,291
Nov 13, 2020	1.89121	2.00312	478,472,089
Dec 13, 2020	2.31222	2.30238	549,954,300
Jan 13, 2021	4.72811	4.99928	1,194,145,388
Feb 13, 2021	5.68112	5.73147	1,369,038,843
Mar 13, 2021	5.62849	5.26946	1,258,682,053
Apr 13, 2021	7.06642	7.07528	1,690,026,790
May 13, 2021	6.94943	6.86220	1,639,128,896
June 4, 2021	8.01409	7.73483	1,847,567,549

Note: This table shows CEL price and market capitalization on a monthly basis between March 2020 and June 2021.

While the dramatic increase in the price of CEL echoed a rise in the price of crypto assets generally, CEL's percentage increase in price was significantly greater than the overall crypto asset market.

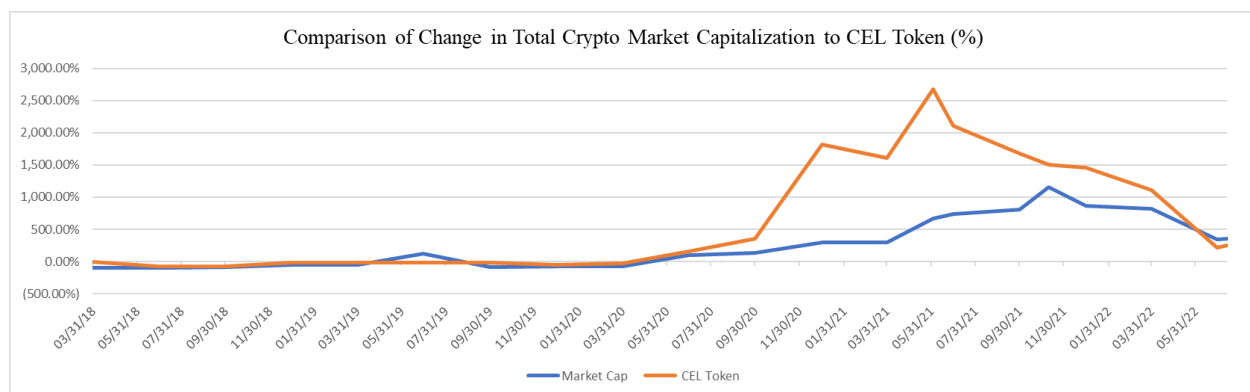
²²⁹ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data> (last visited January 29, 2023).

FIGURE 7: CEL TOKEN COMPARED TO MARKET CAP (\$)



Note: This chart compares the price of CEL to the total crypto coin and token market capitalization over time, using a comparative dollar scale

FIGURE 8: CEL TOKEN COMPARED TO MARKET CAP (%)



Note: This chart compares the percentage change in price of CEL to the percentage change of crypto coin and token market capitalization, starting in March 2018.

CEL was important to Celsius's balance sheet. By December 31, 2020, Treasury CEL plus the unsold AM Venture CEL was valued on Celsius's balance sheet at a mark-to-market value of \$1.5 billion.²³⁰

²³⁰ Celsius Network Ltd. (UK) General Ledger.

C. Celsius Supported CEL With Marketing, Buybacks, And Market-Making.

The exponential increase in CEL's price coincided with an inflationary market and Celsius's own substantial actions to increase the price. Celsius employees on Celsius's CEL trading desk attributed the increase in CEL price to Celsius's actions in the market.²³¹ As noted above and as early as 2018, Celsius had purchased from the market, and publicly disclosed its purchase of, some CEL needed to satisfy customer rewards.²³² In 2018 and 2019, Celsius calculated on a weekly basis the quantity of CEL it needed to pay customers for the week and then typically purchased half of the required amount from the market while obtaining the other half from Celsius's general deployment wallets.²³³ As a result, in 2018 and 2019, Celsius transferred at least 140 million CEL, valued at over \$11 million, into its wallets from the secondary market.²³⁴

In internal communications, Celsius referred to buybacks from May to August 2018 as "an effort to help stabilize the price," during which time Celsius repurchased 3 million CEL from the market.²³⁵ As time passed, Celsius also

²³¹ Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023).

²³² Celsius, AMA June 14, 2018, YouTube (June 14, 2018), <https://www.youtube.com/watch?v=P89WfneySwE> ("We've . . . already started earning interest and started buying some CEL token in the open market . . .").

²³³ Treutler, Johannes, Slack (April 6, 2020), CEL-UCC-00196099, at 1.

²³⁴ Appendix 6, Summary of CEL Token Purchases. The Examiner's blockchain analysis confirmed at that least 32.5 million of these CEL purchases (worth \$2.3 million) were buybacks of CEL.

²³⁵ Harrell, Ashley, CEL Buybacks/Interest Paid/Treasury Redemptions, Email (April 22, 2020), CEL-UCC-00067822, at 1; Appendix 6; Token Celsius, Etherscan, <https://etherscan.io/token/0xaaaeb6fe48e54f431b0c390cfaf0b017d09d42d> (last visited January 29, 2023).

contracted with “market makers,” which provide liquidity for assets traded in a secondary market. In June 2019, Celsius hired Algoz “to perform Market Making on CEL and help us with buybacks that reflect the interest paid.” In March 2020, Celsius hired Wintermute for market making.²³⁶

At the end of October 2019, CEL’s listed price was \$0.05²³⁷—well below its initial ICO price. Internal Celsius communications in November 2019, however, show that Celsius was committed to changing how the market viewed CEL with the goal of having the price of CEL “track the activity on our network,” which Mr. Mashinsky believed “ha[d] not happened since we launched Celsius.”²³⁸ In response, Johannes Treutler, Head of Trading Desk, stated that to “fix the correlation of CEL and Celsius . . . growth” would require “changing the style we buy back CEL” and proposed a system by which Celsius would be much more active in the CEL market.²³⁹ These internal discussions manifested themselves fully the following year and fundamentally changed the way Celsius interacted with its own token.

Beginning in 2020, Celsius’s managers began to more frequently discuss in public settings Celsius’s CEL buyback program and how the program helped increase CEL’s price. For example, Celsius’s then-Vice President of Finance and

²³⁶ Harrell, Ashley, CEL Buybacks/Interest Paid/Treasury Redemptions, Email (April 22, 2020), CEL-UCC-0067822, at 2.

²³⁷ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/> (last visited January 29, 2023).

²³⁸ Mashinsky, Alex, CEL Liquidity / Algoz, Email (November 10, 2019), CEL-UCC-00332921, at 2.

²³⁹ Treutler, Johannes, CEL Liquidity / Algoz, Email (November 10, 2019), CEL-UCC-00332921, at 1, 2.

Operations stated in an AMA, “we work with a lot of different coins that enable us to generate enough revenue to put that back into the market for CEL. Because we have to go out to the market to buy CEL every week to pay it, we’re using the revenues we’re making from these loans to be able to convert that into CEL that we pay back to the community.”²⁴⁰

In May 2020, Celsius’s strategy became more nuanced. In connection with discussions of overall strategy for buying CEL, Mr. Mashinsky stated his basic premise: “Our job is to protect CEL”²⁴¹ In line with this thinking, the new approach to CEL management had one “main thesis”—that Celsius will “rise and fall with CEL”²⁴²—and three primary components:

First, Celsius began to regularly buy back more than 50% (and usually 100%) of the weekly CEL rewards from the market.²⁴³ Mr. Mashinsky explained: “[W]e do not use [CEL already held by Celsius] for the weekly buys, so the weekly buys are a 100% done from the market. So when we tell you we’ve bought

²⁴⁰ Celsius, AMA July 2, 2020, YouTube (July 2, 2020), <https://www.youtube.com/watch?v=Ym1EjbThjVk>.

²⁴¹ Mashinsky, Alex, CEL OTC, Email (May 16, 2020), CEL-UCC-00265110, at 4.

²⁴² Celsius, OTC Desk <> CEL Treasury, Internal Company Document, CEL_EXAM-00123399, at 1. This idea appears to have been shared throughout portions of the trading. For example, in October 2021, Simon Callaghan (then Head of OTC Markets) commented that “CEL is a barometer of our performance” Callaghan, Simon, CEL strategy ideas, Email (October 20, 2021), CEL_EXAM-00168428, at 1.

²⁴³ Treutler, Johannes, EXCO Slides – notes for the 5 CEL slides, Email (June 2, 2020), CEL-UCC-00077834, at 1 (reporting that, in late May 2020, Celsius bought 100% CEL rewards), 3 (reporting in late May 2020 that Celsius bought 80% CEL rewards); Treutler, Johannes, Slack (August 5, 2020), CEL-UCC-00277814, at 2 (showing percentage of rewards purchased from market between March 6, 2020 and July 31, 2020); Treutler, Johannes, Slack (September 22, 2020), CEL-UCC-00195427, at 3 (J. Treutler confirming on September 22, 2020 that 100% of CEL buyback should be from the market and not to use CEL in Treasury).

the million or a little bit more of CEL, you know for sure that it came from us actually going into the different markets and grabbing CEL spot price.”²⁴⁴

Based on the setting of reward rates, Celsius would calculate how much CEL was needed to pay customers rewards. Celsius would time its purchases of the needed CEL throughout the week to either raise the price of CEL or avoid a price drop. This strategy proved to be successful. For example, on May 29, 2020, Harumi Urata-Thompson, then-Chief Financial Officer and Chief Investment Officer, congratulated Mr. Nolan stating, “[G]reat jobs with CELs. I was told during the AMA that it hit 20 cents.”²⁴⁵ Mr. Nolan responded, “Yeah that was mainly us haha we did this week[']s buy- which was the plan of course.”²⁴⁶ Likewise, on July 14, 2020, Ms. Urata-Thompson instructed Mr. Nolan that “if the CEL market dips, let’s go in with all we got for this week and buy it up.”²⁴⁷

Second, Celsius began placing “resting orders” of CEL purchases on exchanges at prices below the then-current market price of CEL; these resting orders would automatically trigger if CEL dipped to the specified price. For example, if CEL was trading at \$0.10, Celsius would put in an order to automatically purchase a specified amount of CEL at \$0.08. Celsius did this for the express purpose of token price control.²⁴⁸ As Mr. Treutler explained: “The

²⁴⁴ Celsius, AMA October 2, 2022, YouTube (October 2, 2020), <https://www.youtube.com/watch?v=HpTDWR7fnas>.

²⁴⁵ Urata-Thompson, Harumi, Slack (May 29, 2020), CEL-UCC-00195218, at 2.

²⁴⁶ Nolan, Connor, Slack (May 29, 2020), CEL-UCC-00195218, at 2.

²⁴⁷ Urata-Thompson, Harumi, Slack (July 14, 2020), CEL-UCC-00195239, at 1.

²⁴⁸ Nolan, Connor, Slack (May 29, 2020), CEL-UCC-00195218, at 2.

current buyback structure is designed to take [large] sellers [of CEL] out of the market if possible. To prevent others to front run these sell orders and depress the market for weeks.”²⁴⁹ To ensure that Celsius stayed ahead of market conditions, Mr. Treutler and Mr. Nolan, and later Dean Tappen (Coin Deployment Specialist) would monitor CEL trading activity seven days a week and readjust the “resting orders” as needed to protect the price of CEL.²⁵⁰

In executing this strategy, Celsius was often protecting CEL from price drops caused by Mr. Mashinsky selling large amounts of his personal CEL holdings. Mr. Mashinsky sold at least 3.6 million CEL in 2019, at least another 11.9 million CEL in 2020, and at least an additional 8.7 million CEL in 2021.²⁵¹ On April 5, 2020, for example, Mr. Treutler noted that within the previous 24 hours, Mr. Mashinsky had withdrawn 800,000 CEL; 508,000 the week prior; 650,000 two weeks prior; and 900,000 three weeks prior—“and all the CEL go to a wallet he mostly uses for Liquid” (an exchange platform).²⁵² Mr. Mashinsky continued to sell throughout 2020, causing Mr. Treutler to comment in October 2020, “I am still concerned about the CEL Alex is selling every day . . . 120k CEL yesterday . . . 120k CEL the day before . . . Alex is the biggest seller by far and depressing the market . . . 120k CEL = \$165K a day.”²⁵³ At those

²⁴⁹ Treutler, Johannes, Slack (June 5, 2020), CEL-UCC-00195304, at 3.

²⁵⁰ Treutler, Johannes, Slack (September 24, 2020), CEL-UCC-00195432, at 2.

²⁵¹ Appendix 6; Token Celsius, Etherscan, <https://etherscan.io/token/0xaaaeb6e6fe48e54f431b0c390cfaf0b017d09d42d> (last visited January 29, 2023).

²⁵² Treutler, Johannes, Slack (April 5, 2020), CEL-UCC-00277598, at 2.

²⁵³ Treutler, Johannes, Slack (October 15, 2020), CEL-UCC-00277962, at 1.

volumes, Mr. Mashinsky constituted “between 20-25% of the daily trading volume.”²⁵⁴ Likewise, in January 2021, one of Mr. Mashinsky’s other companies began selling off large amounts of CEL to such a degree that Celsius had to continue increasing the size of its resting orders, buying the CEL Mr. Mashinsky was selling, and thus protecting CEL’s price from, in the words of Mr. Treutler, “drop[ping] like a stone.”²⁵⁵

Third, Celsius started using its over-the-counter (OTC) trading desk to sell CEL. These sales, which were made at market prices, went “hand in hand with the weekly CEL purchases for Interest payments. . . .”²⁵⁶ This strategy was internally referred to as the “OTC Flywheel” and operated on the theory that: “[t]he more CEL we sell . . . [t]he more CEL we can repurchase . . . [t]he more attractive CEL markets look like . . . [t]he more CEL buy orders we received . . . [t]he more our Treasury is worth.”²⁵⁷ In early discussions of this tactic, Mr. Treutler stated, “[t]his is a flywheel, and we can’t prove that it is one if we don’t start using it.”²⁵⁸

An internal memo dated April 20, 2020, described the OTC Flywheel strategy and explained that CEL repurchases, which it described as “value based repurchase examples,” would be made “on a case to case basis depending on our

²⁵⁴ *Id.*

²⁵⁵ Treutler, Johannes, Slack (January 7, 2021), CEL-UCC-00282987, at 1.

²⁵⁶ Treutler, Johannes, CEL OTC, Email (May 15, 2020), CEL-UCC-00265137, at 2.

²⁵⁷ Celsius, OTC Desk <> CEL Treasury, Internal Company Document, CEL_EXAM-00123399, at 1.

²⁵⁸ Treutler, Johannes, Slack (May 15, 2020), CEL-UCC-00277625, at 3.

Cash Needs.”²⁵⁹ The April 20 memo provided guidance to the OTC desk about how to execute these purchases and suggested that for small CEL sales (sales up to 250,000 CEL or \$25,000 worth), the OTC desk should repurchase 50% within one week of the initial sale. For “big” sales (sales up to 4 million CEL or \$400,000 worth), the OTC desk should repurchase 33% within one week of the initial sale. And for “extreme [sic] big” sales (sales of 10 million CEL or over \$1 million worth), the OTC desk should repurchase 25% within one week of the initial sale.²⁶⁰

Once the program started, Celsius often would purchase CEL in amounts significantly greater than needed to meet reward obligations. For example, on November 10, 2020, Mr. Treutler proposed and directed the purchase of 100,000 CEL per day for that week, even though Celsius only needed 65,000 CEL per day to satisfy its reward obligations.²⁶¹ Similarly, in late December 2020, Celsius’s trading desk bought a total of \$3.8 million in CEL despite needing only \$1.5 million to cover its reward obligations.²⁶²

The amount of CEL purchased and the price involved were secondary concerns. The primary goal was to “always . . . buy at le[ast] as much to keep

²⁵⁹ Celsius, OTC Desk <> CEL Treasury, Internal Company Document, CEL_EXAM-00123399, at 1. Mr. Nolan confirmed to the Examiner that the precise approach to CEL buybacks “could vary on [a] week-to-week basis.” Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023).

²⁶⁰ Celsius, OTC Desk <> CEL Treasury, Internal Company Document, CEL_EXAM-00123399, at 1.

²⁶¹ Treutler, Johannes, Slack (November 10, 2020), CEL-UCC-00195494, at 1.

²⁶² Treutler, Johannes, Slack (December 28, 2020), CEL-UCC-00195539, at 2.

the OTC flywheel alive and to rescue CEL from large sellers if needed.”²⁶³ The resources needed to achieve this goal were significant. In 2020, Celsius transferred at least 106.9 million CEL into its wallets from the secondary market.²⁶⁴ Of this amount, Celsius bought back at least 53.6 million of these CEL tokens at a cost of at least \$58.1 million.²⁶⁵ On at least one occasion Mr. Nolan questioned whether Celsius should continue with certain buybacks given the cost involved and how high the price of CEL had risen in response to Celsius’s efforts. Mr. Treutler responded, “I don’t think we pushed too far. Honestly there is no too far.”²⁶⁶ Mr. Nolan told the Examiner that he “voiced this concern [about costs Celsius was incurring to conduct buybacks] a few times” and was “assured” that “we had the funds.”²⁶⁷

Celsius’s strategy to protect the price of CEL worked in early September 2020, when the price of crypto assets experienced a decline.²⁶⁸ On September 6, 2020, Mr. Treutler instructed Mr. Nolan to continue to buy CEL to “push the overall price” with the goal of setting a “new [higher] normal” price of

²⁶³ Treutler, Johannes, Slack (November 30, 2020), CEL-UCC-00195513, at 1.

²⁶⁴ Appendix 6; Token Celsius, Etherscan, <https://etherscan.io/token/0xaaaeb6fe48e54f431b0c390cfaf0b017d09d42d> (last visited January 29, 2023).

²⁶⁵ Appendix 6; Token Celsius, Etherscan, <https://etherscan.io/token/0xaaaeb6fe48e54f431b0c390cfaf0b017d09d42d> (last visited January 29, 2023).

²⁶⁶ Treutler, Johannes, Slack (August 12, 2020), CEL-UCC-00195375, at 4.

²⁶⁷ Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023).

²⁶⁸ Treutler, Johannes, Slack (September 6, 2020), CEL-UCC-00195400, at 1.

CEL in relation to BTC.²⁶⁹ Mr. Treutler and Mr. Nolan credited these efforts with staving off a significant price drop to “save [the] day.”²⁷⁰

Similarly, on September 19, 2020, Mr. Treutler and Mr. Nolan discussed a strategy for buying additional CEL to “keep pushing” CEL prices higher.²⁷¹ Mr. Treutler solicited Mr. Nolan’s views, and Mr. Nolan responded: “[D]epends on how aggro we want to be.”²⁷² Mr. Treutler answered: “Enough Aggro to fuel the next wave of FOMO [Fear of Missing Out] . . . Prices drive prices.”²⁷³ The next day, Mr. Treutler noted “CEL . . . did pretty well. We bought between 0.000057-0.000064 [BTC] and price does live now between 0.000062-0.000073.”²⁷⁴ Mr. Treutler and Mr. Nolan then discussed and agreed “to keep supporting the rise” in CEL and to purchase any “sell walls as they appear” to guard against a price drop.²⁷⁵

At times, Celsius was buying “100% of markets” for CEL.²⁷⁶ On occasion, Celsius also bought CEL to improve its position in business deals. In one case, Mr. Treutler noted that “[w]e bought a lot [of CEL] . . . to support price for this

²⁶⁹ Treutler, Johannes, Slack (September 6, 2020), CEL-UCC-00195400, at 1.

²⁷⁰ Nolan, Connor, Slack (November 6, 2020), CEL-UCC-00195484, at 5.

²⁷¹ Nolan, Connor, Slack (September 18, 2020), CEL-UCC-00195412, at 2.

²⁷² *Id.*

²⁷³ Treutler, Johannes, Slack (September 18, 2020), CEL-UCC-00195412, at 2.

²⁷⁴ Treutler, Johannes, Slack (September 19, 2020), CEL-UCC-00195419, at 1.

²⁷⁵ Treutler, Johannes, Slack (September 19, 2020), CEL-UCC-00195419, at 1; Nolan, Connor, Slack (September 19, 2020), CEL-UCC-00195419, at 2.

²⁷⁶ Treutler, Johannes, Slack (September 18, 2020), CEL-UCC-00195461, at 1.

deal” and that the purchases resulted in Celsius securing a better deal in the transaction than it otherwise would have secured.²⁷⁷

The overarching goal of Celsius’s three-prong strategy was “to keep the FOMO flywheel spinning.”²⁷⁸ Within Celsius, there was a shared view that “if people want to know if Celsius is doing well they look at CEL and not at anything else.”²⁷⁹ And for a time, Celsius’s CEL-supporting efforts worked.²⁸⁰ As Roni Cohen-Pavon, Celsius’s Chief Revenue Officer and Head of Strategy, explained, the bottom line was that Celsius “create[d] the market for CEL” through its flywheel model of going to market to buy more.²⁸¹

Internal communications support this conclusion.²⁸² Moreover, Mr. Treutler stated that “the higher \$CEL -> the more people understand Celsius is a legit company and will get customers . . . This is based on what I learned the way people think about it.”²⁸³ Mr. Nolan agreed, calling the increasing price of CEL “our great marketing tool.”²⁸⁴

²⁷⁷ Treutler, Johannes, Slack (November 4, 2020), CEL-UCC-00195479, at 2.

²⁷⁸ Treutler, Johannes, Slack (September 22, 2020), CEL-UCC-00195427, at 1.

²⁷⁹ Treutler, Johannes, Slack (July 13, 2020), CEL-UCC-00195332, at 1.

²⁸⁰ Treutler, Johannes, Slack (September 22, 2020), CEL-UCC-00195427, at 3.

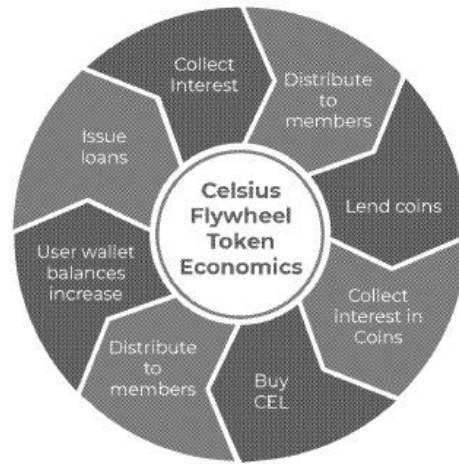
²⁸¹ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

²⁸² Treutler, Johannes, Slack (September 22, 2020), CEL-UCC-00195427, at 3; Nolan, Connor, Slack (September 22, 2020), CEL-UCC-00195427, at 3.

²⁸³ Treutler, Johannes, Slack (September 22, 2020), CEL-UCC-00195427, at 4.

²⁸⁴ Nolan, Connor, Slack (September 22, 2020), CEL-UCC-00195427, at 4.

By June 2020, Celsius had created the following diagram as the primary representation of Celsius's business model:²⁸⁵



In a video posted to the Celsius YouTube channel, Mr. Mashinsky explained how CEL was integral to the Flywheel and to the value of Celsius itself:

the value of CEL is connected to the total economic activity on Celsius More deposits allows us to do more loans, more loans generates more income and more income means more income that Celsius generates from these coins that people gave us translates into us having to buy more Bitcoin, Ethereum, CEL token If we have more users, more loans, more earnings, we have to buy more CEL token. That impacts the price of the CEL . . . all the utilities that allow people to earn more using the CEL token also translate to more demand.²⁸⁶

Stated more succinctly in a 2020 AMA, Mr. Mashinsky said, "More users, more deposits, means more loans, more loans means more interest for Celsius, more interest means more CEL token, you know what happens when you have

²⁸⁵ Celsius, Investor Deck (June 2020), CEL-UCC-00073506.

²⁸⁶ Celsius, CEL token Flywheel and utility, YouTube (Apr. 14, 2020), <https://www.youtube.com/watch?v=3w1Yal8AerQ>.

to go to market to buy more CEL token, prices go up. That's the flywheel and we do it better than anyone else.”²⁸⁷

Mr. Mashinsky reiterated this flywheel concept to the Examiner. After the ICO, Mr. Mashinsky explained, CEL was trading on exchanges, and its value was “whatever it was trading at, that's what the community agrees its value is, market price.”²⁸⁸ Mr. Mashinsky also told the Examiner that the value of CEL was not tied to the value of Celsius as a company but rather to “more users, more assets, more yield, more people earning in CEL.”²⁸⁹

Yet, at the time, Celsius—and in particular Mr. Mashinsky—continued to present CEL as the barometer by which Celsius's financial health should be measured. In an October 5, 2020 video posted to the Celsius YouTube channel, Mr. Mashinsky discussed the “over 2,000 percent increase in the last year” in the price of CEL and stated that “seeing the volume increased tenfold is basically a great validation of the utility of the token as well as the flywheel running on its own instead of us having to crank it up once in a while.”²⁹⁰

Moreover, Celsius would sync some of its large CEL purchases with the AMAs in hopes that the combination of Celsius's price support for CEL and

²⁸⁷ Celsius, Celsius Network Co-Founder AMA with Alex Mashinsky and Daniel Leon, YouTube (July 17, 2020), <https://www.youtube.com/watch?v=csFrn4XtwL0>.

²⁸⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

²⁸⁹ *Id.* This statement, however, essentially described the flywheel model, which Mr. Mashinsky routinely used to describe how Celsius created, maintained, and shared value.

²⁹⁰ Celsius, Celsius Fly-wheel and incoming Inflection point, YouTube (Oct. 5, 2020), <https://www.youtube.com/watch?v=Eu2PvnuJEZ0>.

Mr. Mashinsky's marketing would increase customer demand and price. On May 29, 2020, after apparently observing an increase in CEL's price the week before, Ms. Urata-Thompson directed the trading desk to "schedule the purchase [of CEL] around the AMA today to have a strong effect similar to last week."²⁹¹ She also directed the implementation of another price supporting move: new standing orders to protect against any drop in price.²⁹² The plan worked. The next week, it was reported to Celsius's Executive Committee that the price of CEL went up dramatically—" +55% within 12 hours" on the day of the AMA—and that the "[t]actical CEL purchase enable[d] the rise & AMA caused it."²⁹³

Celsius did not inform its customers of the degree to which Celsius was supporting the price of CEL. In a March 21, 2021 Slack channel conversation, Mr. Treutler told Ms. Urata-Thompson and Mr. Nolan, "Just to clarify between us three: The last 3-4 months we bought always more CEL than what we pay as interest per week but we did not buy it for the interest payments, that was just what we told the community."²⁹⁴

During this CEL expansion period, Mr. Mashinsky also declared on several occasions that Celsius, in contrast to its competitors, had registered with the Securities and Exchange Commission and that CEL was a "registered" token. On October 10, 2020, Mr. Mashinsky replied to a tweet: "We are ready for all

²⁹¹ Urata-Thompson, Harumi, Slack (May 29, 2020), CEL-UCC-00195300, at 1.

²⁹² *Id.*

²⁹³ Treutler, Johannes, EXCO Slides – notes for the 5 CEL slides, Email (June 2, 2020), CEL-UCC-00077834, at 1.

²⁹⁴ Treutler, Johannes, Slack (March 21, 2021), CEL-UCC-00196135.

outcomes. We registered with the SEC in 2018 so we won't have the issues others have."²⁹⁵ Two months later, shortly after the SEC sued Ripple Labs for unregistered offers and sales of its token, XRP, Mr. Mashinsky posted another tweet in which he stated, "All the coins that may be deemed a security are down 20%-50% with #XRP (XLM, XEM, TRX, XTZ, CRO, NEO...) while the only token that registered with the #SEC is up +42% in 14 days (#CEL)."²⁹⁶ During a media interview in December 2020, Mr. Mashinsky likewise stated, "Celsius from day one, one of the first things we did . . . was register with the SEC"²⁹⁷ The Celsius website also included two references to being SEC-regulated: "September 2020 SEC Regulation and April 2018 SEC Regulation."²⁹⁸ Finally, in December 2021, Mr. Mashinsky was quoted in *Barron's* as stating, "The regulators looked into us and said these guys know what they're doing."²⁹⁹

Celsius, in fact, had not registered with the SEC. Celsius had filed a Form-D with the SEC in April 2018 and in September 2020, which stated that Celsius was taking the position that its ICO and subsequent token sale were exempt

²⁹⁵ @Mashinsky, Twitter (October 10, 2020).

²⁹⁶ @Mashinsky, Twitter (December 24, 2020).

²⁹⁷ Celsius Network: Regulations & Yield on Crypto Assets, RealVision (Dec. 6, 2020), <https://www.realvision.com/shows/cryptoverse/videos/celsius-network-regulations-yield-on-crypto-assets-2QXo?tab=details> (last visited January 29, 2023).

²⁹⁸ Why Trust Celsius, Celsius, <https://web.archive.org/web/20210410193914/https://celsius.network/why-trust-celsius/> (last visited January 29, 2023). The links provided below these statements are directed to the SEC's filing database and a Form-D filing on behalf of Celsius.

²⁹⁹ Lending Your Crypto Could Generate Attractive Yields. But How Safe Is It?, *Barron's Online* (December 12, 2021).

from registration.³⁰⁰ One customer wrote to the Examiner that these representations had an impact: “They said Celsius is a UK and US company and is regulated by US FinCEN and SEC. So I thought it was safe to deposit my retirement savings here because I believe in the US financial and legal systems.”³⁰¹

The price of CEL peaked from April through early June 2021 with CEL hitting its record high of \$8.02 on June 4, 2021.³⁰² The dramatic increase in CEL price also created problems for Celsius, because as CEL became more valuable, the cost of supporting the token became greater and eventually unsustainable.³⁰³ Ms. Harrell saw this issue coming, asking on June 18, 2020, “when will we start reducing interest rates on CEL? Eventually this needs to taper off. We can’t afford to keep paying the same % of CEL with the value of the token increasing, and the interest compounding.”³⁰⁴

And while Mr. Mashinsky told the Examiner that Celsius made money buying and selling CEL,³⁰⁵ internal documents show that on January 3, 2021, Mr. Mashinsky sought to end Celsius’s practice of buying CEL from the market

³⁰⁰ Celsius, Form D, U.S. Securities and Exchange Commission (April 12, 2022), https://www.sec.gov/Archives/edgar/data/1923159/000192315922000001/xslFormDX01/primary_doc.xml (last visited January 29, 2023).

³⁰¹ Email to the Examiner (November 5, 2022).

³⁰² Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023).

³⁰³ Celsius, Investment Committee: June 18, Email (June 18, 2020), CEL-UCC-00067514.

³⁰⁴ *Id.*

³⁰⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

to pay weekly rewards, stating, “[w]e cannot support these price levels”³⁰⁶ At the time, CEL was trading at \$6.49.³⁰⁷ Mr. Mashinsky directed Mr. Treutler to “stop buying any CEL for the weekly interest” and to stop buybacks generally until the price of CEL dropped by at least 30%.³⁰⁸ Mr. Treutler agreed to no further buybacks, but that Celsius would keep its resting orders (those orders designed to protect against a sudden and significant drop in CEL price).³⁰⁹ Within one week of Mr. Mashinsky’s “stop buying CEL” directive, CEL dropped by 16% to \$5.45. By January 15, 2021, CEL had fallen by 26% to \$4.75.³¹⁰

In the months leading up to Mr. Mashinsky’s directive, there were several internal discussions about the fact that Celsius’s purchases of CEL were designed to help the insiders who owned, and were selling, large amounts of CEL. Ms. Urata-Thompson summarized her concerns as follows: “I think they [the founders of Celsius] always will have it on the back of their head what is best for their CELs, not best for the company and that to me is [a] conflict of interest.”³¹¹ Similarly, she stated that while using customer funds to purchase CEL made her “nervous,” the idea of using investor funds to purchase CEL made her “queasy”

³⁰⁶ Mashinsky, Alex, Slack (January 3, 2021), CEL-UCC-00336290, at 2.

³⁰⁷ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023).

³⁰⁸ Mashinsky, Alex, Slack (January 3, 2021), CEL-UCC-00336290, at 2.

³⁰⁹ *Id.*

³¹⁰ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023).

³¹¹ Urata-Thompson, Harumi, Slack (August 6, 2020), CEL-UCC-00277823, at 2.

since a “large chunk of it [is] going into our wallet as founders earnings.”³¹² She noted that at that time (August 2020), “Alex [Mashinsky] is earning \$28k a week” in CEL rewards” and “[f]or a company that could lose, at this pace, 6 million before the end of year, I can’t possibly justify this. And we are using equity money that should be used strategically to grow the company. Are we doing that? I don’t think so.”³¹³ When asked in an interview with the Examiner why Celsius bought CEL back from the market rather than using Treasury funds, Mr. Perman responded that the answer lies in who holds the most CEL.³¹⁴

In fact, in the same early January 2021 Slack channel communication in which Mr. Mashinsky discussed the high cost of CEL buybacks, he also spoke about the need “to take unilateral action” concerning the price of CEL. Four days later, Mr. Mashinsky sold approximately \$440,000 worth of his own CEL, all of which Celsius purchased pursuant to resting orders in place to guard against sudden, significant CEL price drops.³¹⁵ These trades caused Ms. Urata-Thompson to comment, “we are talking about becoming a regulated entity and we are doing something possibly illegal and definitely not compliant.” In another communication on December 30, 2020, Ms. Harumi-Thompson wrote that

³¹² Urata-Thompson, Harumi, Slack (August 5, 2020), CEL-UCC-00277814, at 3.

³¹³ *Id.*

³¹⁴ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

³¹⁵ Mashinsky, Alex, Slack (January 3, 2021), CEL-UCC-00336290, at 1.

Mr. Mashinsky's claims that he was disposing of large amounts of his CEL "to control the market" were "exactly what I was afraid of."³¹⁶

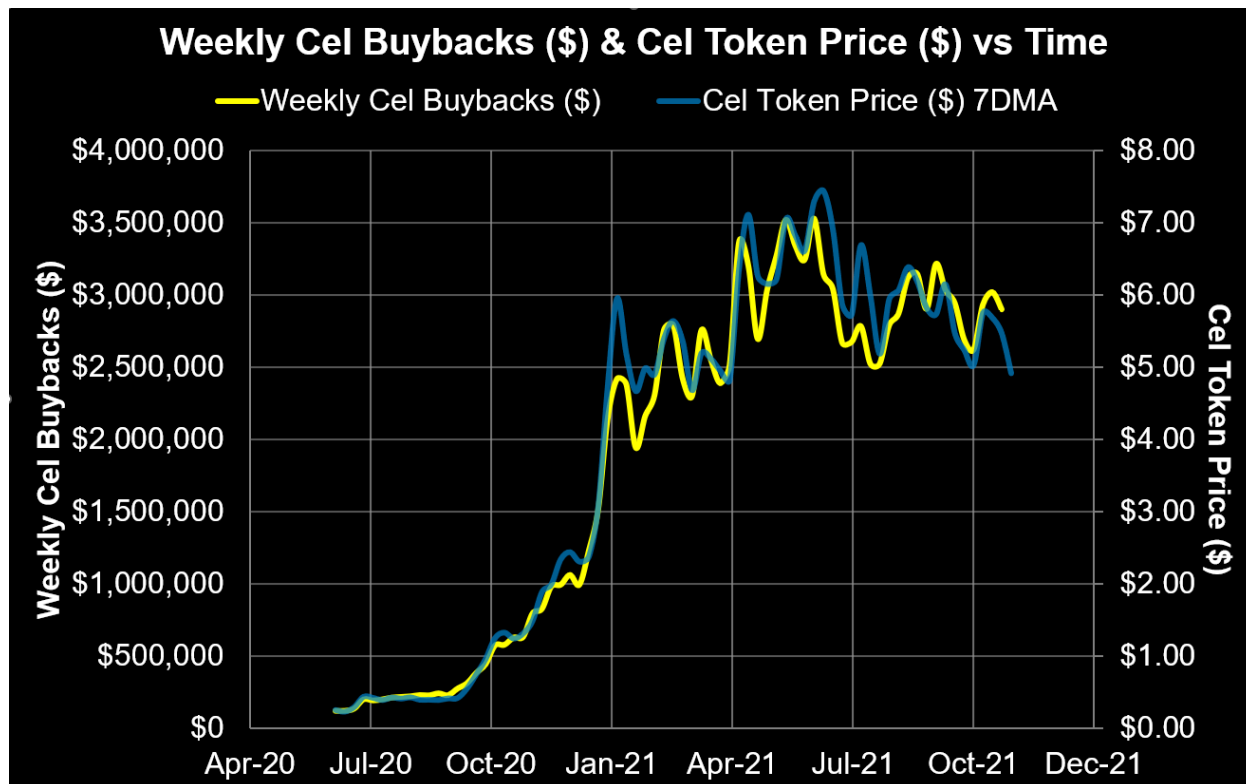
Starting in June 2021, Celsius began to ramp down its direct market making,³¹⁷ and by July 2021, CEL began to consistently decline in price.³¹⁸ As the following Celsius-created chart shows, there is a strong correlation between Celsius's market making activities and the price of CEL. In fact, for significant periods of time, there is almost perfect overlap between the two.

³¹⁶ Urata-Thompson, Harumi, Slack (December 30, 2020), CEL-UCC-00238274.

³¹⁷ Celsius, 314.0, Excel Spreadsheet (2020), CEL_EXAM-00180467 (noting graphs are "AutoUpdated").

³¹⁸ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023).

FIGURE 9: CEL BUYBACKS COMPARED TO CEL PRICE³¹⁹



Note: This chart reflects the strong correlation between CEL's price and Celsius's buy-back activity.

D. Return To Traditional CEL Buybacks Structure.

Given the importance CEL played in both Celsius's marketing efforts and on its balance sheet (as of June 4, 2021, CEL comprised \$5.1 billion (or 29.6%) of Celsius's assets under management), the steady fall in CEL's price beginning in Summer 2021 presented a significant challenge for Celsius.³²⁰ And while Celsius did not reengage in the level of price support it had undertaken in 2020 and the first half of 2021, Celsius did respond by taking several steps to support

³¹⁹ Celsius, 314.0, Excel Spreadsheet (2020), CEL_EXAM-00180467 (noting graphs are "AutoUpdated").

³²⁰ Coin Stats Worksheet, Celsius Freeze Report (June 4, 2021).

CEL's price. Celsius continued to buy "100% of the interest owed from the market in order to pay rewards in CEL" into 2022 at an annualized cost of \$135 million.³²¹

Both Mr. Nolan and Mr. Tappen told the Examiner that Celsius's aggressive approach to CEL buybacks caused, in part, the BTC and ETH coin shortage and "hole" in Celsius's balance sheet discovered in early 2021.³²²

E. Celsius Burned CEL.

Beginning in October 2021, Celsius began burning CEL regularly.³²³ Celsius initially considered instituting a regular burn in 2019.³²⁴ The initial proposal was to allocate 10-20% of revenue to open market purchases of CEL that would be burned as a way to "ensure the token continues to grow in value and adoption."³²⁵ But Mr. Mashinsky reacted negatively to the proposal, stating, "unlike BNB and many other coins we plan to serve 7.5B people one day so

³²¹ Celsius, Asset-Liability Committee, PowerPoint Presentation (April 13, 2022), CEL-UCC-00042816, at 8.

³²² Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023); Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

³²³ Celsius conducted a one-off burn of CEL in 2019 to refund unaccredited investors who participated in the ICO and to dispose of tokens that went unsold. Celsius decided to "hold off" on disclosing this burn due to concerns that "[t]he public believes that the ICO was fully funded and all tokens purchased. If they find out now that there were unsold [tokens] they will be upset." Celsius, Slack (March 1, 2019), CEL-UCC-00182002.

³²⁴ Treutler, Johannes, Tokenomics for CEL, Email (Sept. 27, 2019), CEL-UCC-00266426.

³²⁵ *Id.*

burning limited supply of tokens is not a long term solution, definitely not part of a 100 year plan for Celsius.”³²⁶

Mr. Treutler, who had not yet been hired by Celsius, weighed in to provide the community’s perspective: “A few months ago we had a big discussion over a few days in a private Community Chat . . . about different concepts of Token Burn Mechanism. But in the end we agreed, that Token Burns are not in the best interest of the Community. Celsius is about giving back to the Community as much Value as possible. And a Token Burn with 10% of the revenues would literally burn Value you could have distributed to the Community.”³²⁷

But in October 2021, Celsius began burning CEL worth 10% of the rewards it paid every week, which Mr. Tappen said was to “decrease the supply.”³²⁸ According to Mr. Cohen-Pavon, the justification for changing course was twofold: it reflected a common practice within the crypto industry and it helped to increase the value of CEL.³²⁹ Mr. Mashinsky explained that, “[i]n crypto, you are competing with 18,000 other products, many of them have a burn function, customers have to decide which tokens to hold, they compare features.”³³⁰ He said that “burn is one of those features, a reduction in the

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022); Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

³²⁹ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

³³⁰ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

circulating supply,” and if CEL did not have that feature, “your product is not thought of favorably.”³³¹ On the day the CEL burn was announced (October 1, 2021), Mr. Nolan provided a short explanation for the reasoning behind it: “[B]urning = price go up.”³³²

Internally, however, Mr. Tappen raised concerns about this new practice. On October 1, 2021, the day Celsius announced the institution of the regular burn during an AMA,³³³ Mr. Tappen said it was “gonna look bad when we lower CEL rates in a few weeks.”³³⁴ When previously asked for his thoughts on a CEL burn, Mr. Tappen told Zach Wildes (Community Manager and Corporate & VIP Account Manager), “it didn’t solve the problem and it was a bad idea. Wouldn’t [be] surprised if this was a marketing decision or just Alex decision.”³³⁵ Mr. Tappen explained to the Examiner that he believed the burning policy was harmful to Celsius given Celsius’s financial issues at the time. Burning CEL had the effect of increasing the cost to Celsius of buying CEL to pay rewards and, in Mr. Tappen’s view, Celsius should have been operating with “a reduction of cost

³³¹ *Id.*

³³² Celsius, Slack (Oct. 1, 2021), CEL-UCC-00239552, at 2.

³³³ Celsius, Celsius AMA October 1st 2021 (Oct. 1, 2021), <https://www.youtube.com/watch?v=mUokZbnfFyE>.

³³⁴ Celsius, Slack (Oct. 1, 2021) CEL-UCC-00239552.

³³⁵ *Id.*

mindset.”³³⁶ In total, from October 1, 2021 through June 10, 2022, Celsius burned a total of 2.9 million CEL.³³⁷

F. Celsius Increased Marketing Of CEL And Expanded The Ability To Earn CEL As Rewards For Non-CEL Deposits.

In late 2021, Celsius engaged in a renewed marketing push concerning CEL and updated the Flywheel graphic on its website by dropping “issue loans.”³³⁸



Around the same time, Celsius began to increase its public comments about the Flywheel. During the December 3, 2021 AMA, Mr. Mashinsky told listeners, “People say the Celsius flywheel stopped turning. The Celsius flywheel is turning

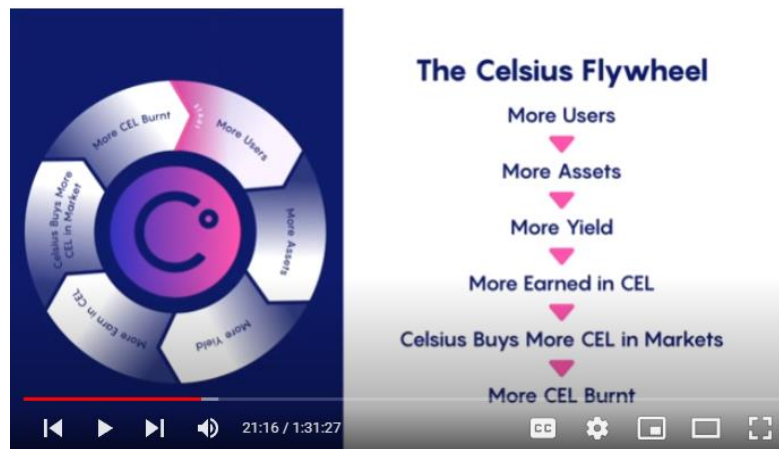
³³⁶ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

³³⁷ See Appendix 8.

³³⁸ CEL Token Explained, Celsius, <https://celsius.network/cel-token-explained> (last visited January 29, 2023).

faster than ever. Look at our AUM, our user base . . . we have more users than ever before.”³³⁹

Moreover, while never updated on the Celsius website, Mr. Mashinsky posted to Twitter yet another version of the Flywheel on January 20, 2022.³⁴⁰ This version of the Flywheel is pared down to just six spokes and provided a clear start position: “more users.”³⁴¹



Mr. Mashinsky explained during the January 21, 2022 AMA:

We refreshed the flywheel . . . again more users equals more assets, more assets is more yield. We’ve done those three very, very well . . . We’ve been cranking it up but where we get stuck is more earning in CEL . . . we had a lot of congestion there; the wheel got stuck in that more earned in CEL especially with Americans.³⁴²

³³⁹ Celsius, Celsius AMA 3rd December 2021 (December 3, 2021), <https://www.youtube.com/watch?v=IrRC8KDBSww>.

³⁴⁰ @Mashinsky, Twitter (January 20, 2022).

³⁴¹ Celsius, Celsius AMA 21st January 2022 (January 21, 2022), https://www.youtube.com/watch?v=fKq5J6DqsOw&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSqf_5oV&index=18.

³⁴² *Id.*

The Flywheel and CEL utility also was discussed during at least 13 of the 22 AMAs held in 2022 prior to the Pause,³⁴³ with fairly consistent messaging: Celsius was planning and implementing changes that would help the Flywheel “keep flying and accelerating.”³⁴⁴ These changes included the ability of accredited investors to earn in CEL,³⁴⁵ accepting new types of crypto assets,³⁴⁶ the introduction of Celsius X (the DeFi engineering arm of Celsius),³⁴⁷ and a change in rewards tiers.³⁴⁸

G. The Impact Of CEL On Celsius’s Financial Statements.

CEL had a significant impact on Celsius’s financial statements. Celsius recorded CEL on its financial statements as Treasury CEL and Non-Treasury

³⁴³ January 7, 2022, January 14, 2022, January 21, 2022, February 4, 2022, February 11, 2022, February 25, 2022, March 4, 2022, March 11, 2022, March 18, 2022, April 1, 2022, April 22, 2022, April 29, 2022, and May 6, 2022.

³⁴⁴ Celsius, Celsius AMA March 4th 2022 (March 4, 2022), https://www.youtube.com/watch?v=4qOhnEj1SSU&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV&index=22.

³⁴⁵ Celsius, Celsius AMA January 14th 2022 (January 14, 2022), https://www.youtube.com/watch?v=Ad3jD4e8sYc&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV; Celsius, Celsius AMA February 4th 2022 (February 4, 2022), https://www.youtube.com/watch?v=V1wRAu5A-jw&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV&index=15.

³⁴⁶ Celsius, Celsius AMA 18th February 2022 (February 18, 2022), https://www.youtube.com/watch?v=i57Itzb2MQU&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV&index=23; Celsius, Celsius AMA April 22 2022 (April 22, 2022), <https://www.youtube.com/watch?v=D0izcO3XlnQ>.

³⁴⁷ Celsius, Celsius AMA 25th February 2022 (February 25, 2022), https://www.youtube.com/watch?v=Nc6and-K3k4&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV&index=14; Celsius, Celsius AMA April 1st 2022 (April 1, 2022), https://www.youtube.com/watch?v=ELjw52R6BzY&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV&index=11.

³⁴⁸ Celsius, Celsius AMA March 4th 2022 (March 4, 2022), https://www.youtube.com/watch?v=4qOhnEj1SSU&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsf_5oV&index=21.

CEL. Treasury CEL included the CEL not sold as part of the ICO and the 325 million CEL that Celsius held back from the ICO sale. Non-Treasury CEL included the CEL Celsius bought in the secondary market for its own account, as well as CEL held to meet customer obligations.

Before Celsius began its enhanced buyback strategy, on February 28, 2019, Celsius added 175.5 million CEL tokens to its balance sheet as Treasury CEL.³⁴⁹ The Treasury CEL was added at mark-to-market value, amounting to \$6.6 million in additional balance sheet assets.³⁵⁰ On November 13, 2020, an additional 25 million unsold CEL tokens were added to Celsius's books as Treasury CEL at a value of \$38.5 million.³⁵¹ On December 31, 2020, the 117 million CEL initially marked for purchase by AM Venture was also added to Celsius's balance sheet as part of the Treasury CEL at a value of \$638.8 million.³⁵²

But as a result of the increased price of CEL resulting from Celsius's enhanced buyback strategy and the bull market for crypto assets, at the end of 2020, the value of Treasury CEL recorded on Celsius's books was \$1.5 billion.³⁵³ As reflected in the below chart, this value increased to \$1.7 billion by the end of

³⁴⁹ Celsius Network Ltd. (UK) General Ledger. At the time, the per CEL price was \$0.037998.

³⁵⁰ *Id.*

³⁵¹ *Id.* The CEL was recorded at a price of \$1.54.

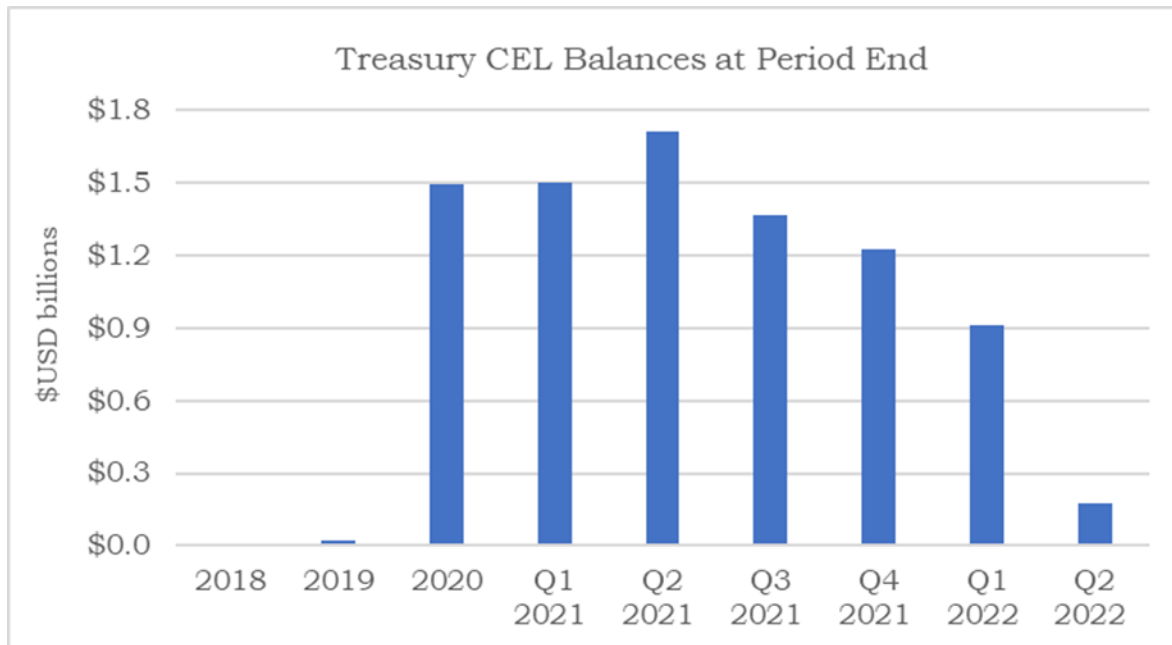
³⁵² *Id.* At the time, the per CEL price was \$5.46.

³⁵³ *Id.* The 117 million CEL was recorded as "CEL Token – Auxiliary CEL" at a price of \$5.46.

³⁵³ *Id.*

the second quarter of 2021 (by which point, the price of CEL was \$4.37).³⁵⁴ By the end of 2021, the amount recorded for Treasury CEL was \$1.2 billion, and even in June 2022, when CEL was trading for approximately \$0.63,³⁵⁵ Treasury CEL was still carried at a value of \$178.5 million:

FIGURE 10: TREASURY CEL BOOK VALUES



Note: This chart depicts the Treasury CEL values reflected on Celsius's books and records from 2018 until the second quarter of 2022.

Celsius's non-Treasury CEL also was reflected on Celsius's records at a mark-to-market value. Celsius's accounting records aggregate non-Treasury CEL with other crypto assets and do not separately account for these CEL.³⁵⁶ But the Freeze Reports, which Celsius prepared from May 2021 forward, do

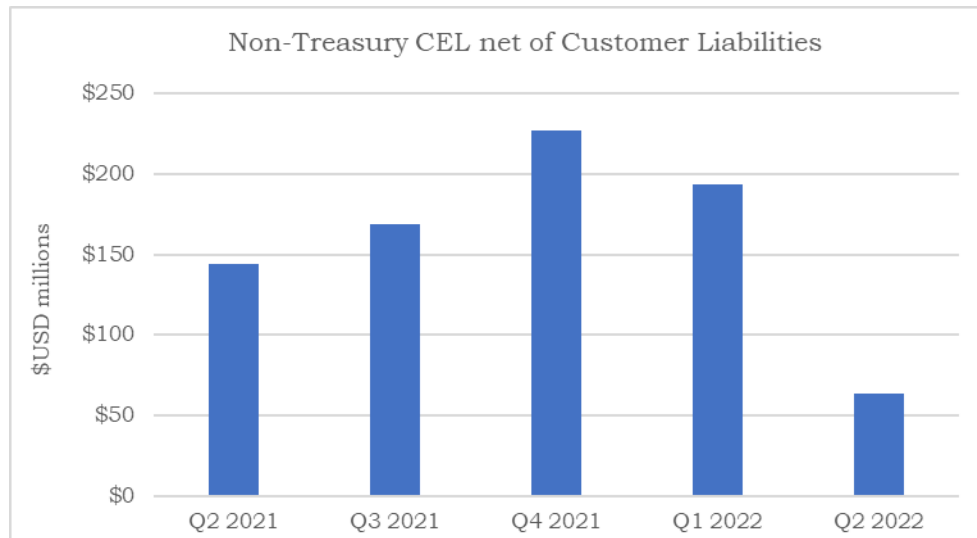
³⁵⁴ *Id.*

³⁵⁵ Celsius, CoinMarketCap, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023).

³⁵⁶ *Id.*

separately account for the non-Treasury CEL and CEL attributable to customer liabilities payable in CEL.³⁵⁷ The chart below shows the value of non-Treasury CEL (net of CEL held to meet customer liabilities) on each of the quarter ends for which the information is available:³⁵⁸

FIGURE 11: NON-TREASURY CEL BOOK VALUES



Note: This chart summarizes the non-Treasury CEL values (excluding CEL held to meet customer obligations) reflected on Celsius's books and records from the second quarter of 2021 until the second quarter of 2022.

While the financial statements reported significant value associated with CEL, Celsius had few (if any) options for deploying CEL, and the market for CEL was created and then largely supported by Celsius itself. Further, even though almost all of Celsius's CEL holdings were classified as the most liquid assets (Tier 1), no CEL was ever liquidated to address liquidity needs, even at the height of

³⁵⁷ *Id.*

³⁵⁸ Celsius, Freeze Report (June 30, 2021); Celsius, Freeze Report (September 30, 2021); Celsius, Freeze Report (December 21, 2021); Celsius, Freeze Report (March 30, 2022); Celsius, Freeze Report (June 30, 2022).

Celsius's liquidity crisis. Celsius employees described CEL as "worthless,"³⁵⁹ stating that its price "should be 0,"³⁶⁰ that Celsius should "assume CEL is \$0 since we cannot liquidate our current CEL position,"³⁶¹ and questioning whether any party (other than Celsius itself) was purchasing CEL.³⁶²

* * *

In total, Celsius spent at least \$558 million³⁶³ buying its own token on the market. From 2018 through the Petition Date, Celsius purchased at least 223 million CEL³⁶⁴ from the secondary market, a greater number than the total amount of CEL (203 million)³⁶⁵ released to the public in the ICO. In effect, Celsius bought every CEL token in the market at least one time and in some instances, twice.

IV. Celsius's Growth In Customers And Assets And Its Failure To Keep Pace With Revenue Generation.

With the arrival of a bull market cycle from mid-2020 into 2021 and continued high reward rates, Celsius experienced explosive growth in the number of users on its platform, the value of assets under its management, and the price of its CEL. But Celsius was unable to consistently generate sufficient

³⁵⁹ Tappen, Dean, Slack (April 13, 2022), CEL-UCC-00083099, at 2.

³⁶⁰ Perman, Jason, Slack (May 12, 2022), CEL-UCC-00092037, at 2.

³⁶¹ Tappen, Dean, Re: Weekly CEL Activities & P&L (05/07-05/13/2022), Email (May 18, 2022), CEL-UCC-00120671.

³⁶² Perman, Jason, Slack (May 11, 2022), CEL-UCC-00082725, at 2.

³⁶³ See Appendix 6.

³⁶⁴ *Id.*

³⁶⁵ Token, Celsius, Etherscan, <https://etherscan.io/token/0xaaaeb6fe48e54f431b0c390cfaf0b017d09d42d#code> (last visited January 29, 2023).

yield to cover the rewards it was offering to its customers. At the same time, Celsius took on investment risks that led to substantial one-off losses. Together, these factors contributed to a persistent lack of assets to cover liabilities that existed through the Petition Date.

A. Celsius's Growth.

Celsius experienced tremendous growth in customers and assets under management from its inception through its peak in November 2021. Although Celsius gained only 47,224 total registrations from launch in 2018 through September 2019,³⁶⁶ the following year marked a significant turning point. By September 2020, according to data presented to the Celsius Executive Committee, Celsius had 184,439 registered users.³⁶⁷ Between October 2020 and the end of January 2021, Celsius gained approximately 190,556 new users, bringing total registered users to 374,995.³⁶⁸ By December 2021, Celsius boasted well over 1 million registered users, and had more than tripled in size over the course of the year, based on internal user registration data.³⁶⁹

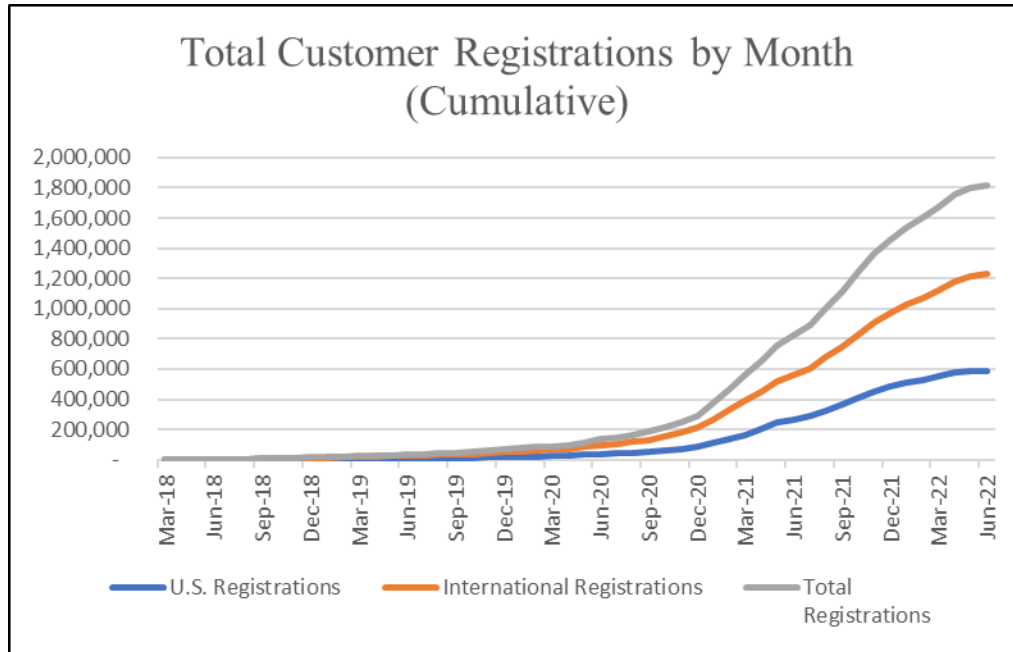
³⁶⁶ Huron generated Celsius registration numbers using data provided by Celsius in the ExCo Dashboard. Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

³⁶⁷ Huron generated Celsius registration numbers using data provided by Celsius in the ExCo Dashboard. Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

³⁶⁸ Huron generated Celsius registration numbers using data provided by Celsius in the ExCo Dashboard. Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

³⁶⁹ Huron generated Celsius registration numbers using data provided by Celsius in the ExCo Dashboard. Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

FIGURE 12: QUARTERLY CUSTOMER REGISTRATIONS



Note: This chart reflects the cumulative number of new Celsius account registrations from the first quarter of 2018 through the second quarter of 2022.

New monthly registrations reflect this growth trajectory, as depicted below.³⁷⁰ On average, new monthly registrations in 2018 were 1,493, which grew to 4,625 in 2019.³⁷¹ In March 2020, new customer registrations were approximately 6,000 per month.³⁷² By June 2020, the number of new customer registrations had more than tripled, rising to 20,642 in that month.³⁷³ By January 2021, monthly new customer registrations were at just under

³⁷⁰ Huron generated Celsius registration numbers using data provided by Celsius in the ExCo Dashboard. Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

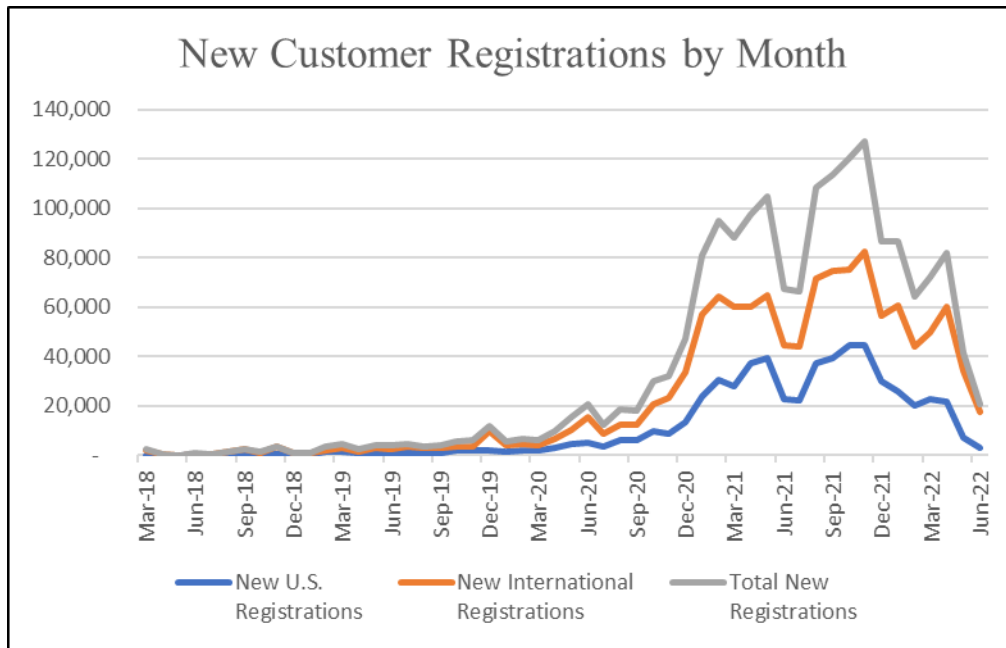
³⁷¹ Huron generated Celsius registration numbers using data provided by Celsius in the ExCo Dashboard. Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

³⁷² Celsius, ExCo Dashboard, Internal Company Document, CEL_EXAM-00014325.

³⁷³ *Id.*

81,000.³⁷⁴ The number would peak around November 2021, with 128,960 new customers registering that month.³⁷⁵

FIGURE 13: MONTHLY CUSTOMER REGISTRATION



Note: This chart reflects new Celsius account registrations, by quarter, from the first quarter of 2018 through the second quarter of 2022.

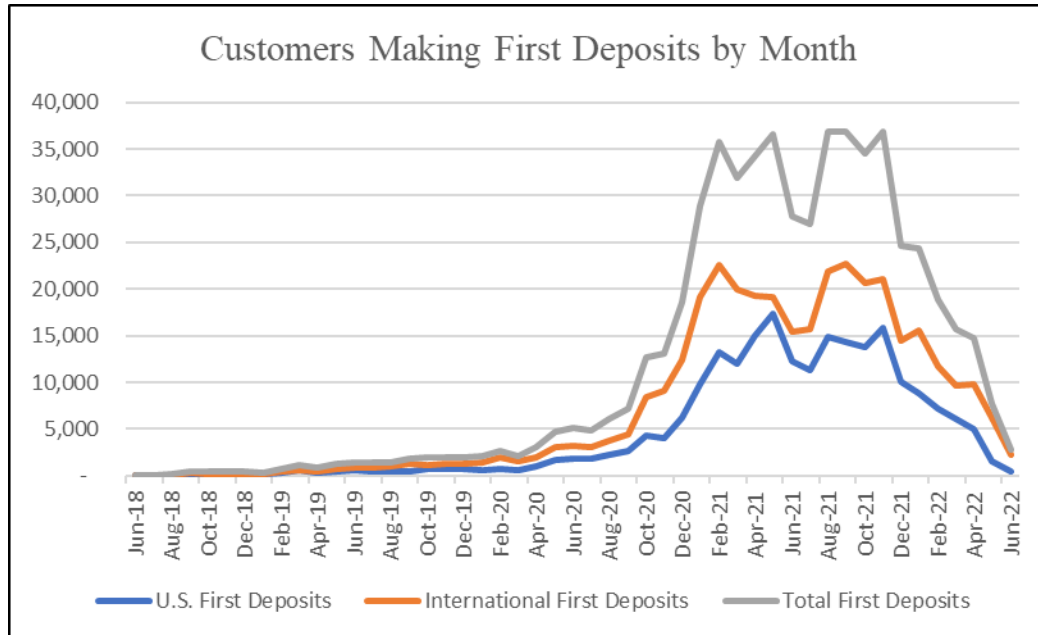
Only a portion of these newly registered customers, however, chose to make deposits with Celsius. For example, in November 2021, Celsius received deposits from only approximately 25% of its 128,960 new customer accounts.³⁷⁶

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

FIGURE 14: MONTHLY CUSTOMER FIRST DEPOSITS



Note: This chart reflects the number of new Celsius customers making a first deposit with Celsius, by month, from June 2018 through June 2022.

Celsius also experienced significant growth in its crypto assets under management. In June 2020, Celsius had approximately \$680 million in assets on its platform.³⁷⁷ In December 2020, Celsius publicly claimed that a blockchain analytics firm, Chainalysis, had confirmed Celsius's methodology in calculating more than \$3.3 billion in total assets under management.³⁷⁸ This made Celsius

³⁷⁷ Celsius Network secures US\$10M equity raise with Tether as lead investor, PR Newswire (June 22, 2020), <https://www.prnewswire.com/news-releases/celsius-network-secures-us10m-equity-raise-with-tether-as-lead-investor-301081105.html> (last visited January 29, 2023).

³⁷⁸ Celsius Network Partners with Chainalysis To Confirm Audit of \$3.31 Billion in Assets, PR Newswire (December 9, 2020), <https://www.prnewswire.com/news-releases/celsius-network-partners-with-chainalysis-to-confirm-audit-of-3-31-billion-in-assets-301189705.html> (last visited January 29, 2023) ("Celsius Network, the industry-leading cryptocurrency rewards-earning platform, today announced the completion of an audit confirming \$3,318,368,196.40 of assets by Chainalysis, the blockchain analysis company. The conclusion of this audit, confirmed through Chainalysis Reactor, the investigative blockchain analysis tool, provides the first third-

the second-largest digital asset manager in the world at the time.³⁷⁹ By January 20, 2021, Celsius reported over \$5.3 billion in assets under management,³⁸⁰ having grown this number “10X during 2020.”³⁸¹ And by August 24, 2021, Celsius reported over \$20 billion in total assets under management.³⁸² Celsius’s growth was covered by the mainstream media, with public reporting of Celsius assets at \$25 billion as of October 2021.³⁸³ Celsius touted that it was “adding close to [\$1 billion] a month in new assets, as the company trends towards the number one position in total asset holdings in the

party verification to date of Celsius Network's assets, based on transactions, total deposits and total withdrawals since launch of the service in June 2018.”); Buchvarov, Krasimir, Audit Confirms Celsius Has \$3.3B in Assets, The Chain Bulletin (December 9, 2020), <https://chainbulletin.com/audit-confirms-celsius-has-3-3b-in-assets> (last visited January 29, 2023). Note that Chainalysis did not conduct an audit nor did it confirm that Celsius had more than \$3.3 billion in assets under management, as Celsius publicly claimed. Rather, Chainalysis confirmed Celsius’s methodology in calculating Celsius’s assets under management.

³⁷⁹ Celsius crosses \$5.3B in assets, grows total assets 10X during 2020, PR Newswire (January 20, 2021), <https://www.prnewswire.com/news-releases/celsius-crosses-5-3b-in-assets-grows-total-assets-10x-during-2020--301211701.html> (last visited January 29, 2023).

³⁸⁰ *Id.*; Holert, Patrick, Risk Committee – Meeting #2 (January 7, 2021), CEL-UCC-00040854.

³⁸¹ Celsius crosses \$5.3B in assets, grows total assets 10X during 2020, PR Newswire (January 20, 2021), <https://www.prnewswire.com/news-releases/celsius-crosses-5-3b-in-assets-grows-total-assets-10x-during-2020--301211701.html> (last visited January 29, 2023).

³⁸² Celsius Network Assets are officially over \$20 billion, PR Newswire (August 24, 2021), <https://www.prnewswire.com/news-releases/celsius-network-assets-are-officially-over-20-billion-301361803.html> (last visited January 29, 2023) (stating that the company confirmed \$20,366,621,718 in crypto assets as of August 13, 2021).

³⁸³ Shubber, Kadhim, Oliver, Joshua, Crypto lender Celsius Network raises \$400m as regulatory pressure grows, Financial Times (October 12, 2021), <https://www.ft.com/content/b47c9499-f4a6-46f4-991b-e8f7f20d49e2> (last visited January 29, 2023).

crypto industry.”³⁸⁴ Mr. Mashinsky noted that while new deposits contributed in part to this growth, so too did the market run-up.³⁸⁵

B. Celsius’s Revenue Generation Failed To Keep Pace With Growth.

Celsius grew its assets in part by offering customers high, and at times above-market reward rates, leading to an increase in customer deposits and additional liabilities in the form of rewards. But Celsius’s asset deployment strategies failed to generate the returns necessary to support the high rewards it was offering on that increasing asset base. As a result, Celsius found itself operating under a negligible (and oftentimes negative) net interest margin (“NIM”), which Celsius calculated by measuring the difference between the yield that Celsius earned on its deployed assets relative to the cost of those same assets. As explained in Part Two, Section V. below, some Celsius employees (especially in Treasury) were concerned that Celsius’s method of calculation did not account for the cost of its liabilities and resulted in an overstated NIM that made Celsius appear profitable, when in fact it was not. But even overstated, Celsius routinely reported a low or negative NIM.³⁸⁶

A combination of factors contributed to Celsius’s poor NIM, including reward rates that exceeded Celsius’s own ability to generate yield and several

³⁸⁴ Celsius, Celsius Network Assets are officially over \$20 billion, Cision PR Newswire (August 24, 2021), <https://www.prnewswire.com/news-releases/celsius-network-assets-are-officially-over-20-billion-301361803.html> (last visited January 29, 2023).

³⁸⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

³⁸⁶ What is Net Interest Margin? Overview, Example, investopedia.com (last visited January 29, 2023).

investments that led to substantial one-off losses. Put simply, while Celsius grew its assets under management, it was not a profitable company.

1. Celsius Struggled To Generate Yield To Support Its High Reward Rates.

Reward rates were a centerpiece of the Celsius business model and growth ambitions. The Whitepaper told customers that they would “always receive a minimum of at least 5% annual interest on any lent crypto currencies.”³⁸⁷ Moreover, Celsius often noted that it offered higher reward rates than its competitors. For example, in August 2020, Celsius announced that “all Celsius customers can access the industry’s highest rate for BTC.”³⁸⁸ In 2020, Mr. Mashinsky posted to Twitter that “[t]he best rates to earn interest are on @CelsiusNetwork” and that, with Celsius, people can “earn the highest yield in the industry.”³⁸⁹

On this issue, Celsius’s representations generally were accurate. It did, on average, offer some of the highest reward rates on crypto assets in the industry³⁹⁰—a fact several customers told the Examiner was important in their

³⁸⁷ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023)

³⁸⁸ Celsius Network now offers 6.2% APY on your first 5 Bitcoins, PR Newswire (August 24, 2020), <https://www.prnewswire.com/news-releases/celsius-network-now-offers-6-2-apy-on-your-first-5-bitcoins-301117223.html> (last visited January 29, 2023).

³⁸⁹ @Mashinsky, Twitter (July 21, 2020); @Mashinsky, Twitter (February 19, 2020).

³⁹⁰ Celsius Network now offers up to 15.89% APY on 12 stablecoins, PR Newswire (August 26, 2020), <https://www.prnewswire.com/news-releases/celsius-network-now-offers-up-to-15-89-apy-on-12-stablecoins-301119023.html> (last visited January 29, 2023).

decision to deposit their crypto assets with Celsius.³⁹¹ Customers began receiving rewards in the third quarter of 2018.³⁹² At first, Celsius offered rewards in-kind on just three crypto assets: BTC at 3.5%, ETH at 3.25%, and LTC at 5%.³⁹³ Within a month, though, Celsius dramatically increased the rates to 5.5% for BTC, 6.7% for ETH, and 7.01% for LTC.³⁹⁴

For most of its existence, Celsius did not have a formal reward rate determination policy. Prior to its July 1, 2021 adoption of a Reward Policy, Celsius had no formal policy in place. With “no clear process to guide rate-setting,” Celsius made reward decisions on an ad hoc basis, based largely on Mr. Mashinsky’s concerns that “all of Celsius’s customers w[ould] leave” if rates dropped below those of Celsius’s competitors.³⁹⁵ Others at Celsius expressed that “[t]here is no evidence that has ever supported the rates we pay,”³⁹⁶ and

³⁹¹ Examiner Interview of Celsius Customer (December 6, 2022); Examiner Interview of Celsius Customer (December 8, 2022), Examiner Interview of Celsius Customer (December 15, 2022). Even Celsius’s own Head of Innovation and Chief Compliance Officer, Oren Blonstein, was a customer prior to becoming an employee. He said the “great yield” offered by Celsius was one of the motivating factors for him to choose Celsius over competitors like Coinbase, Kraken, or Gemini. Oren Blonstein Deposition Transcript (November 22, 2022), at 69:7-70:10.

³⁹² Internet Archive Wayback Machine, [https://archive.org/web/\(celsians.com/current-and-historical-rates\)](https://archive.org/web/(celsians.com/current-and-historical-rates)) (last visited January 29, 2023).

³⁹³ Current & Historical Rates - CELSiANS (archive.org).

³⁹⁴ *Id.*

³⁹⁵ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

³⁹⁶ Tappen, Dean, Re: Rate Suggestion, Internal Document, Email (December 13, 2021), CEL_EXAM_00057814, at 4.

believed that, to be sustainable, Celsius needed to set rates based on economic analysis without a marketing overlay.³⁹⁷

Among other responsibilities, Celsius's Investment Committee set reward rates.³⁹⁸ But the Investment Committee had "no formal voting structure."³⁹⁹ Instead, Former Vice President of Finance and Director of Operations Harrell said that Mr. Mashinsky decided what rates the Investment Committee would set and that his "ability to be receptive [to alternative views] waived depending on his mood and who was in the room."⁴⁰⁰ Ms. Harrell recalled that Mr. Mashinsky wanted to ensure that Celsius offered higher rates than its competitors, and "there was always tension" if others on the Committee proposed

³⁹⁷ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023); Tappen, Dean, Re: Rate Suggestion, Internal Document, Email (December 13, 2021), CEL_EXAM_00057814, at 4.

³⁹⁸ The standard Investment Committee agenda included (1) lending rates; (2) deployment updates; (3) rate changes (including review of competitor rates); and (4) updates on deposits and withdrawals. Celsius, Investment Committee: June 18, Email (June 18, 2020), CEL-UCC-00067496. A separate committee, known as the Deployment Committee, was formed in May 2020 with the mandate to discuss investment issues "from a strategic point of view" and bring opportunities to the Investment Committee for a vote. *Id.* (including an email from Urata-Thompson to Mashinsky on May 20, 2020 regarding the first Deployment Committee meeting).

³⁹⁹ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

⁴⁰⁰ *Id.*

lowering rates.⁴⁰¹ As Mr. Mashinsky had the ultimate authority to make these decisions,⁴⁰² when he opposed lowering rates, his viewpoint carried the day.⁴⁰³

Ms. Harrell recalled that the Investment Committee would select reward rates based on two factors: Celsius's current deployments and how those deployments were faring; and a comparison of Celsius's reward rates with those of its competitors.⁴⁰⁴ Accordingly, Celsius diligently tracked competitor rates, such as in the following chart presented on June 18, 2020 to the Investment Committee:⁴⁰⁵

⁴⁰¹ *Id.*

⁴⁰² *Id.*; Nolan, Connor, Re: Investment Committee: July 16, Email (July 16, 2020), CEL-UCC-00067239 (Investment Committee email thread circulating data on competitor rates); Holert, Patrick, Re: Investment Committee: June 18, Email (June 18, 2020), CEL-UCC-00067496 (same).

⁴⁰³ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

⁴⁰⁴ *Id.*; Nolan, Connor, Re: Investment Committee: July 16, Email (July 16, 2020), CEL-UCC-00067239 (Investment Committee email thread circulating data on competitor rates); Holert, Patrick, Re: Investment Committee: June 18, Email (June 18, 2020), CEL-UCC-00067496 (same).

⁴⁰⁵ Holert, Patrick, Re: Investment Committee June 18 (June 18, 2020) CEL-UCC-00067496.

6/18/2020					Flex 3 Mo lockup w/500 MCO stake	
Deposit Rates	Celsius	BlockFi	Nexo	Bitfinex	Binance	Crypto.com
BTC	4.03	6.00		4.27	0.82	1.5 / 6.5
ETH	3.82	4.50		4.21	1.01	2 / 5
CEL	5.12					
LTC	4.13	3.80			1.15	2 / 5
XRP	3.61		5.00	0.47	0.72	1.54 / 4.5
OMG	3.11			4.98		
BCH	3.82		5.00	4.10	0.85	
ZRX	2.89			3.34		
XLM	3.10		5.00		0.42	
ZEC	0.00					
BTG	0.00					
DASH	6.18			3.09	1.83	
ETC	6.11			0.60	2.11	
EOS	4.45			0.04	1.61	
XAUT	3.04					
USD			8.00			
EURO						
USDT	8.69			6.77	1.39	
USDC	8.69	8.60	8.00			6 / 12
TUSD	8.69		8.00			6 / 12
SAGA	8.69					
GUSD	8.69	8.60				
PAX	8.69	8.60	8.00			6 / 12
MCDAI	8.69		8.00			

Celsius's internal analysis illustrated that from February to July 2020, the weighted average of Celsius's reward rates rose from just under 5% to 7.5%.⁴⁰⁶

⁴⁰⁶ Iram, Asaf, Re: Investment Committee July 16, Email (July 15, 2020), CEL-UCC-00067239 (Investment Committee email thread circulating data on reward rates).

In 2020, the Investment Committee was “rebranded” as the New Business Committee.⁴⁰⁷ According to Patrick Holert, then Celsius’s Finance Risk Officer, the mandates of the former Investment Committee and the New Business Committee were “really the same thing.”⁴⁰⁸ Internal policies describe the New Business Committee as the entity responsible for reviewing and voting on whether to approve new business activities, including investments, deployment opportunities, partnerships, and other initiatives.⁴⁰⁹ Mr. Nolan stated that the New Business Committee was also responsible for making recommendations regarding rate-setting.⁴¹⁰

The “relabeling” of the Investment Committee as the New Business Committee did not reduce Mr. Mashinsky’s influence. While Mr. Cohen-Pavon characterized the New Business Committee as “democratic” and involving “open discussion,”⁴¹¹ Mr. Holert recalled that Mr. Mashinsky had “an overriding vote” and “could veto something even if 90% of the group agreed about it.”⁴¹² Rodney

⁴⁰⁷ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁴⁰⁸ *Id.*

⁴⁰⁹ Celsius, Celsius Network Risk Policies & Procedures (Pending Approval of Risk Committee) (April 10, 2021), CEL-UCC-00034224, at PDF 6. Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022) (describing New Business Committee as “focused on the deployment of coins and business opportunities”).

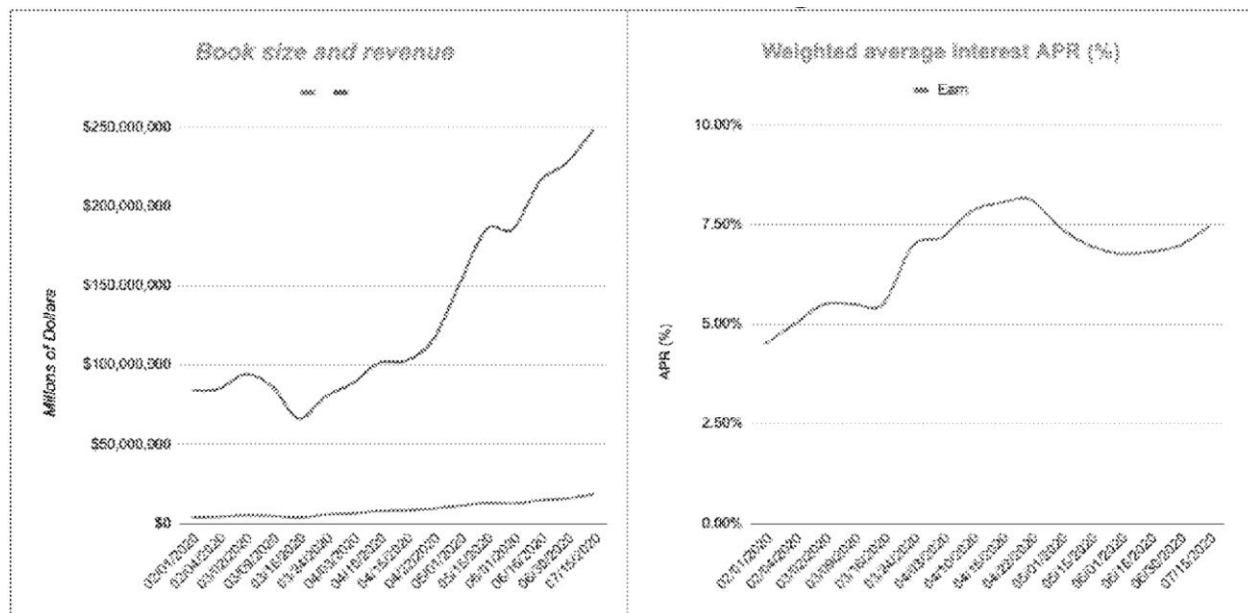
⁴¹⁰ Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023).

⁴¹¹ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

⁴¹² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

Sunada-Wong, former Chief Risk Officer, who joined Celsius in March 2021, recalled a lack of process: “Someone would propose something in [the] New Business Committee, and then and there, a decision would be made. It’s the first time you hear about it, and you’re asked, ‘approve or don’t approve?’”⁴¹³

While reward rates stayed high, Celsius struggled to generate yield on the deployment of its crypto assets to satisfy what it promised to customers.⁴¹⁴ A July 2020 chart illustrated the correlation between “book size,” revenue, and rates: revenue grew the slowest of all three between February and July 2020.⁴¹⁵



Though Ms. Harrell did not recall a negative NIM becoming a concern during Investment Committee meetings, by late July 2020, Celsius’s inability to

⁴¹³ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁴¹⁴ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁴¹⁵ Nolan, Connor, Re: Investment Committee: July 16 (July 16, 2020) CEL-UCC-00067329.

reach a consistent and material positive NIM had drawn Mr. Mashinsky's attention.⁴¹⁶ As of July 22, 2020, Celsius's yield on assets under management amounted to only 0.62% for the first seven months of the year.⁴¹⁷ In response, Mr. Mashinsky pushed the team to achieve better results (though not by lowering reward rates), asking: "What is our plan to get ot [sic] 3% net yield [NIM] . . . you need to put a model together that projects where you are going to earn it and track against it."⁴¹⁸

The 3% NIM metric was important for Celsius. Mr. Perman told the Examiner that most U.S. banks achieve a two to three percent NIM, which made it "a good range to be in."⁴¹⁹ A June 18, 2020 presentation entitled, "Our Path to 1.1.22," which laid out Celsius's targets through January 1, 2022, set a goal to "[i]mprove net annualized return on the book from 1% to 3%"⁴²⁰ As Frank van Etten, Chief Investment Officer from September 2021 until February 2022, later described it, while NIM can vary (and even at points be negative), "over time it should be around 3% otherwise there is no business."⁴²¹

⁴¹⁶ Mashinsky, Alex, Email Re: Investment Committee: July 23, 2020 (July 23, 2020), CEL-UCC-00077634.

⁴¹⁷ *Id.* According to the Assets Under Management spreadsheet, Celsius calculated this percentage yield by dividing the net return on its deployments (revenue less cost) by the value of total assets under management.

⁴¹⁸ *Id.*

⁴¹⁹ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

⁴²⁰ Celsius, Aligning Goals to Resources: Our Path to 1.1.22, PowerPoint Presentation (June 18, 2020), CEL_EXAM-00079523, at 5.

⁴²¹ van Etten, Frank, Re: NIM and other profitability measures, Email (November 24, 2021), CEL-EXAM-00061503.

As time progressed, and as achieving a 3% NIM became ever more elusive, Mr. Mashinsky changed his target NIM to 2%.⁴²² Celsius, however, offered its customers reward rates that prohibited Celsius from reaching even this lower threshold—a fact Mr. Mashinsky acknowledged to the Examiner.⁴²³ For example, for the week of February 6, 2021, rewards obligations equaled 120% of Celsius’s gross revenue for that week, and for March 21, 2021, 174% of Celsius’s gross revenue.⁴²⁴ On an annual basis, Celsius entered a reward obligation/available revenue after overhead expenses deficit in 2021 (at a negative \$425 million). Cumulatively, from 2018 through June 30, 2022, that deficit amounted to a negative \$663 million.⁴²⁵

By Spring 2021, Celsius employees expressed concern about not having access to sufficient cash to meet Celsius’s business expenses. On April 15, 2021, Ms. Urata-Thompson wrote that Celsius would need access to a “minimum [of] 100-150 million to go over this week and next week.”⁴²⁶ In response, Mr. Tappen stated, “if you are asking us to source 100 million we cannot do that.”⁴²⁷ Mr. Nolan agreed stating, “as [I] said yesterday we cant [sic] get that much at all

⁴²² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023). Mashinsky, Alex, How we get to 2% positive NIM, Email (March 16, 2022), CEL_EXAM-00057158. Celsius, Board Meeting Deck, Presentation (May 2022), CEL-UCC-00064034, at 5 (discussing “Planned ~2.00% NIM in 4Q22”).

⁴²³ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁴²⁴ Celsius, Weekly P&L, Excel Spreadsheet (February 6, 2021), CEL-UCC-00192957.

⁴²⁵ Appendix 11, Analysis of Cryptocurrency Revenue and Rewards.

⁴²⁶ Urata-Thompson, Harumi, Slack (April 15, 2021), CEL-UCC-00238934, at 1.

⁴²⁷ *Id.* The biggest cash need at that time according to Ms. Urata-Thompson was for Celsius’s mining operations. *Id.*

without closing positions with Equities First.”⁴²⁸ Ms. Urata-Thompson noted that “this is a real problem we have. Even disregarding the deployment needs, we have EFH [Equities First Holdings] repayment, mining and retail lending needs.”⁴²⁹

While the deployment team was trying to solve liquidity issues, some within leadership were questioning Celsius’s entire approach to reward rates. At the end of March 2021, Mr. Sunada-Wong, the newly arrived Chief Risk Officer, wrote to Brian Strauss, the newly arrived Chief Credit Officer, asking whether, as BlockFi began to cut rates, “there are implications for the rates we pay depositors.”⁴³⁰ Mr. Sunada-Wong questioned whether Celsius was “letting what we pay on deposits drive the yield we must target on our assets? And if so, is the ‘cart before the horse’?”⁴³¹ Mr. Strauss responded: “Dead on.”⁴³² Jason Perman, former Vice President of Treasury, told the Examiner that Celsius leadership could not simply demand more productive deployment than what the market would sustain: “[T]hat’s not how the market works.”⁴³³

⁴²⁸ *Id.*

⁴²⁹ *Id.* at 2.

⁴³⁰ Sunada-Wong, Rodney, re: Average Celsius Cost of Funding, Email (March 29, 2021), CEL-UCC-00060081.

⁴³¹ *Id.*

⁴³² Strauss, Brian, re: Average Celsius Cost of Funding, Email (March 29, 2021), CEL-UCC-00060081.

⁴³³ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

On July 1, 2021, Celsius adopted its first formal Reward Rate Determination Policy (the “Reward Policy”).⁴³⁴ Its purpose was to “determine the procedures under which any decision regarding reward rate changes should be made,” given the fact that rewards “have a central role in Celsius’s business model” and “a direct and important relation to Celsius’s positioning in the market as well as the Company’s EBITA [sic].”⁴³⁵

Under the Reward Policy, a newly created Portfolio Committee was responsible for making any reward rate changes.⁴³⁶ When considering setting reward rates, the Portfolio Committee was not to be guided solely by whether Celsius could obtain a positive NIM.⁴³⁷ Instead, the Portfolio Committee was to consider three factors. First, the Committee was to consider competition, because Celsius had “positioned itself as one of the highest rewards paying companies in the crypto market” and it believed that any changes to a reward rate needed to be considered in light of competitors’ offerings.⁴³⁸ Second, the Committee was to consider coin supply (customer deposits with Celsius) and

⁴³⁴ Celsius, Reward Rate Determination Policy, Internal Company Document (June 29, 2021), CEL-UCC-00147991, at 4.

⁴³⁵ *Id.* at 1.

⁴³⁶ *Id.*

⁴³⁷ Celsius, Risk Committee Meeting (Part II), Internal Company Document (May 14, 2021), CEL-UCC-00040910. In fact, in response to regulatory inquiries into whether Celsius’s rewards constituted the sale of unregistered securities, Celsius consistently took the position that their “[reward] rates are not subject or tied to the future performance of the Company.” Celsius, Response to Kentucky Public Protection Cabinet, Letter (July 16, 2021), CELUCC-00023248.

⁴³⁸ Celsius, Reward Rate Determination Policy, Internal Company Document (June 29, 2021), CEL-UCC-00147991.

demand (Celsius's deployment opportunities), because high reward rates encouraged customers to loan more coins, while low reward rates encouraged customer withdrawals.⁴³⁹ Finally, the Committee was to consider strategic and risk management considerations, which required weighing the potential conflict between the goals of "[a]chieving rapid growth in coin liabilities" on the one hand and "[a]chieving profitability, and [r]isk management," on the other.⁴⁴⁰

Organizational responsibilities shifted in connection with the new Reward Policy, and Treasury took over the role of pricing customer deposits—*i.e.*, setting reward rates—from the Deployment team.⁴⁴¹ According to Mr. Perman, Ron Sabo, Head of Research, had previously managed reward rates and Mr. Perman believed that deposits were not priced appropriately under Deployment's management.⁴⁴²

Through the end of 2021, concerns regarding rewards Celsius was paying its customers continued. As of December 29, 2021, Mr. Mashinsky continued to prioritize moving Celsius's NIM "to positive territory."⁴⁴³ Mr. Mashinsky's solution was not to lower reward rates or slow customer growth, but rather to deploy more of Celsius's assets and to do so more aggressively.⁴⁴⁴ In his interview

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

⁴⁴² Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

⁴⁴³ Mashinsky, Alex, All approved DeFi platforms, Email (December 29, 2021), CEL_EXAM-00054158, at 2.

⁴⁴⁴ *Id.*

with the Examiner, Mr. Mashinsky conceded that Celsius paid out too much in rewards to achieve a 2% NIM.⁴⁴⁵ The tension between maintaining reward rates and the need to increase NIM was unsustainable, leaving Celsius little room for error. As Mr. Perman would later put it: “I’ve never seen a company paint itself in a corner like we have.”⁴⁴⁶

2. Celsius Lost Hundreds Of Millions Of Dollars In Bad Investments And Deployments.

Celsius’s challenges in productively deploying assets were not visible to its customers. Celsius publicly promoted its ability to invest in only the highest quality opportunities.⁴⁴⁷ In 2021, Mr. Mashinsky told the *Financial Times*, “From a risk standpoint, we are probably one of the least risky businesses that regulators worldwide have ever seen.”⁴⁴⁸

But Celsius made a series of risky investments and deployments in 2019 and 2020 that proved to be financially costly—and in some cases, circumvented the risk process entirely—contributing to what Celsius calculated as of May 2022

⁴⁴⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁴⁴⁶ Perman, Jason, Slack (May 26, 2022), CEL-UCC-00092106, at 3.

⁴⁴⁷ During a March 2020 AMA, Mr. Mashinsky said: “The credit goes to a finance department [and] the credit risk management for not . . . lending to risky institutions or risky hedge funds. We stick with the highest quality.” Celsius, Crypto Market Commentary with Alex Mashinsky, YouTube (March 13, 2020), https://www.youtube.com/watch?v=MZIL_IrgV3E&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSqf_5oV&index=47. A year later, during an AMA, Zach Wildes agreed with Mr. Mashinsky’s description of Celsius’s risk management and concluded that “[o]ur number one priority is keeping the funds that we’re lending out safe and we would rather . . . lend large scale to a counterparty . . . than to risk earning a ridiculously high yield lending to a shady character.” Celsius, Celsius AMA October 1st 2021, YouTube (October 1, 2021), <https://www.youtube.com/watch?v=mUokZbnfFyE>.

⁴⁴⁸ Alex Mashinsky, Celsius founder feeling the heat, *Financial Times* (June 17, 2022).

to be pre-tax losses in 2021 of over \$800 million.⁴⁴⁹ In the words of Mr. Perman, these misjudgments caused Celsius to “have massive negative equity.”⁴⁵⁰

Four significant investments—Equities First Holdings, LLC, Grayscale GBTC, KeyFi, Inc., and Stakehound—played a part in these losses and exposed Celsius’s tendency for ad hoc decision making and mismanagement of significant deployments.

a. Equities First.

Celsius lost approximately \$288 million as the result of two loans it took out with Equities First Holdings, LLC (“Equities First”). Equities First is an institutional investment firm that specializes in long-term asset-backed financing.⁴⁵¹ Celsius borrowed in total approximately \$129 million from Equities First in October 2019 and July 2020, pledging BTC and ETH that significantly increased in value after the pledge.⁴⁵² Celsius recouped a portion of its collateral when two initial tranches of the loan were repaid, but when Celsius sought to repay additional outstanding loans in July 2021 Equities First informed Celsius

⁴⁴⁹ Celsius, Board Discussion May 2022, PowerPoint Presentation (May 2, 2022), CEL-UCC-00000447; UCC, Discussion_NewCo Plan_10-27-22_EXAMINER VERSION.

⁴⁵⁰ Celsius, Board Discussion May 2022, PowerPoint Presentation (May 2, 2022), CEL-UCC-00000447.

⁴⁵¹ About, Equities First, <https://equitiesfirst.com/kr-en/about/> (last visited January 29, 2023); Equities First Holdings: Borrowings and Lendings Executive Summary (November 8, 2022).

⁴⁵² Equities First Holdings: Borrowings and Lendings Executive Summary (November 8, 2022), at 2.

that it could not return the pledged collateral.⁴⁵³ Celsius thereafter accepted a promissory note from Equities First, resulting in a significant loss.⁴⁵⁴

Specifically, on October 4, 2019⁴⁵⁵ and July 31, 2020,⁴⁵⁶ Celsius borrowed \$129 million pursuant to two Master Loan Agreements⁴⁵⁷ with Equities First to “support [Celsius’s] operations.”⁴⁵⁸ To secure the loan, Celsius pledged 1,000 BTC and 38,000 ETH and granted Equities First “all rights, title, ownership and interest” in the pledged collateral.⁴⁵⁹ Although Equities First promised “to maintain its full ability to return” the collateral,⁴⁶⁰ by making this pledge, Celsius ran the risk that Equities First might not be able to return the BTC and ETH when the loans were repaid.

⁴⁵³ Equities First Holdings: Borrowings and Lendings Executive Summary (November 8, 2022) at 2.

⁴⁵⁴ *Id.*

⁴⁵⁵ Master Loan Agreement, Celsius and Equities First (October 4, 2019), CEL-UCC-00031234.

⁴⁵⁶ Master Loan Agreement, Celsius and Equities First (July 30, 2020), CEL-UCC-00044560.

⁴⁵⁷ Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 13.

⁴⁵⁸ Equities First Holdings: Borrowings and Lendings Executive Summary (November 8, 2022).

⁴⁵⁹ Master Loan Agreement, Celsius and Equities First (October 4, 2019), CEL-UCC-00031234, at ¶ 2.8; Master Loan Agreement, Celsius and Equities First (July 30, 2020), CEL-UCC-00044560, at ¶ 2.8.

⁴⁶⁰ Master Loan Agreement, Celsius and Equities First (October 4, 2019), CEL-UCC-00031234, at ¶ 2.10(d); Master Loan Agreement, Celsius and Equities First (July 30, 2020), CEL-UCC-00044560, at ¶ 2.10(d).

Ms. Urata-Thompson negotiated the deal and “ran forward with” it.⁴⁶¹ Mr. Holert—then the Financial Risk Officer—did not learn of the Equities First loans until months later and was “concerned” that he had not been consulted given his role in financial risk.⁴⁶² However, Mr. Holert eventually spoke with Equities First representatives, and in December 2020 assigned Equities First an “A” risk rating, meaning that he viewed Equities First as having the “[s]trong capacity to repay debt.”⁴⁶³

As Mr. Holert described it, the Equities First loans were necessary not only to fund Celsius’s operations, but also to support the retail loans that Celsius extended to its customers (meaning that Celsius borrowed from Equities First and then loaned the proceeds to its customers).⁴⁶⁴ Mr. Mashinsky told the Examiner that Celsius took out this loan notwithstanding the risk because there were few lenders in the industry that loaned dollars as opposed to coins. At the time, Mr. Mashinsky said, Celsius did not have enough stablecoin deposits and it was “hard for us to fill our demand.” He said Celsius needed a lender and that Equities First was used by several other companies.⁴⁶⁵

⁴⁶¹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius, Mining January 3, 2023); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

⁴⁶² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius, Mining January 3, 2023).

⁴⁶³ Celsius, Credit Risk Policy, Internal Company Document, CEL-UCC-00075044, at 5; Celsius, Risk Committee Meeting (December 11, 2020).

⁴⁶⁴ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius, Mining January 3, 2023).

⁴⁶⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

Mr. Strauss explained that the loans were over-collateralized and—after a set period of time—non-recourse to Celsius, meaning that Celsius had the ability to “walk away.”⁴⁶⁶ This was “attractive” to Celsius.⁴⁶⁷ But Mr. Sunada-Wong, who started as Chief Risk Officer in mid-March 2021, as well as Mr. Strauss, recognized that no provision protected Celsius in the event the collateral appreciated because Celsius did not have the ability to make reverse margin calls and get its collateral back as it appreciated.⁴⁶⁸ Mr. Sunada-Wong also noted that Equities First was not required to provide Celsius with its financial statements (or vice versa).⁴⁶⁹

Given the significant appreciation in the value of BTC and ETH over the life of the loan, Celsius soon became concerned that Equities First might not be able to return its collateral. By April 2, 2021, Celsius’s Risk Committee Meeting materials show that Equities First was deemed a “credit risk” with “major exposure[]” for Celsius.⁴⁷⁰ Celsius believed it had “[v]ery significant exposure because the collateral ha[d] appreciated relative to what [Celsius] borrowed”⁴⁷¹ but Celsius was “handcuffed” in its “ability to reduce risk to [Equities First]”

⁴⁶⁶ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*; Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁴⁶⁹ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁴⁷⁰ Celsius, Risk Committee Meeting, Internal Company Document (April 5, 2021), CEL-UCC-00034262.

⁴⁷¹ Celsius, Risk Committee Meeting Minutes, Internal Company Document (April 5, 2021), CEL- CEL-UCC-00042536.

given the lack of ability to make a reverse margin call or repay early.⁴⁷² Mr. Mashinsky told the Examiner that it was impossible to track Equities First's use of the collateral, and that Celsius "got more concerned when no bank would lend to us, our retail business grew rapidly, we had over [\$1 billion] in dollar loans out to customers."⁴⁷³

On July 22, 2021, Celsius sought to repay its Equities First loans so that it could retrieve the balance of the approximately \$638 million worth of crypto assets pledged to Equities First.⁴⁷⁴ But Celsius learned that Equities First was unable to return its collateral on a timely basis, resulting in Celsius having an approximately \$509 million uncollateralized claim against Equities First.⁴⁷⁵ As a result, and to partially off-set Equities First's obligation, Celsius and Equities First agreed to set off their mutual obligations, leaving Equities First owing Celsius approximately \$500 million in crypto assets.⁴⁷⁶

Over the course of several months, Celsius and Equities First settled this debt by negotiating five dollar-denominated lending agreements, each with a

⁴⁷² Equities First Holdings: Borrowings and Lendings Executive Summary (November 8, 2022).

⁴⁷³ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁴⁷⁴ Celsius, Risk Committee Meeting (Part III), Internal Company Document (August 5, 2021), CEL-UCC-00041119; Celsius, Risk Committee Meeting (Part III), Internal Company Document (August 19, 2021), CEL-UCC-00041202.

⁴⁷⁵ Celsius Risk Committee Meeting (Part III), Internal Company Document (August 5, 2021), CEL-UCC-00041119; Celsius, Risk Committee Meeting Part A, Internal Company Document (May 12, 2022), CEL-UCC-00042349, at 20.

⁴⁷⁶ Celsius, Risk Committee Meeting Part A, Internal Company Document (May 12, 2022), CEL-UCC-00042349, at 20.

30 month payment term, for a total of \$340 million, with Celsius as the lender.⁴⁷⁷ Mr. Mashinsky told the Examiner that Celsius's creditors benefitted when Celsius locked in the amount due with Equities First.⁴⁷⁸ He explained that without locking that amount in during a market upswing, Equities First would owe Celsius less than \$200 million today, given the more recent decline in the value of the pledged collateral.⁴⁷⁹ As of November 2021, 3,765 BTC of Celsius's total outstanding collateral remained both un-returned and not subject to any agreement between Celsius and Equities First.⁴⁸⁰

Later in 2021, and even after Celsius learned of the Equities First problem, Celsius continued to make misleading statements about the quality and risk of its investments. During a November 12, 2021 AMA, Mr. Mashinsky said that "in four years we have not had a single institution default either not pay the interest or not return the collateral or the loan coins that we lend to them."⁴⁸¹ While

⁴⁷⁷ Initially, Celsius and Equities First negotiated loans for the return of BTC and ETH. Those loans subsequently were converted into five dollarized loans. Equities First Holdings: Borrowing and Lendings Executive Summary (November 8, 2022), at 3-4.

⁴⁷⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁴⁷⁹ *Id.*

⁴⁸⁰ Initially, Celsius and Equities First negotiated loans for the return of BTC and ETH. Those loans subsequently were converted into five dollarized loans. Equities First Holdings: Borrowing and Lendings Executive Summary (November 8, 2022), at 3-4.

⁴⁸¹ Celsius, Celsius AMA November 12 2021, YouTube (November 12, 2021), <https://www.youtube.com/watch?v=bTrByn1DAFo>. Mr. Mashinsky made a similar statement that "We have amazingly right over four years, never had an institution that took a loan from us and did not pay back, didn't pay their yield" in October 2021, but the AMA review process resulted in this statement being deleted from the posted video. Pavon, Roni, re Needed AMA youtube edits 10/15, Email (October 15, 2021), CEL-UCC-00213110.

Celsius later disclosed its Equities First losses privately to certain of its institutional investors,⁴⁸² it did not disclose the losses publicly.

Celsius first booked a reserve for its potential losses to Equities First in December 2021. As shown below, this reserve has been adjusted over time to primarily reflect the changes in BTC and ETH prices and, to a much lesser extent, payments Equities First has made to Celsius:⁴⁸³

FIGURE 15: EFH RESERVE AS BOOKED BY CELSIUS

Date	Memo/Description	Debit	Credit	Balance
12/01/21	Initial Reserve	\$ -	\$ (377,779,365)	\$ (377,779,365)
12/31/21	Reductions in Reserve	89,774,396		(288,004,969)
05/31/22	Reductions in Reserve	15,856,537		(272,148,432)
09/30/22	Update to Reserve Model		(4,468,765)	(276,617,196)
11/30/22	Update to Reserve Model	12,817,338		(263,799,858)

The Equities First loss was significant. Celsius's internal documents indicate that Celsius lost \$288 million due to Equities First in 2021.⁴⁸⁴ Celsius also recorded Equities First's obligation to Celsius as a receivable on its balance sheet of between \$500 and \$600 million.⁴⁸⁵ But internal communications show that Celsius understood that the vast majority of the obligation was likely to go unpaid. For example, a May 2022 report issued by Celsius's Assets and Liabilities Committee noted that a sale of the Equities First receivable would generate only \$50 to \$75 million in liquidity, and that Celsius estimated that it

⁴⁸² Disclosure Letter, Letter (December 3, 2021), CEL-UCC-00025824 at 13.

⁴⁸³ Celsius Network Ltd. (UK) General Ledger.

⁴⁸⁴ Celsius, Business Outlook - Restructuring, Capital and Liquidity Update, Internal Company Document (June 2, 2022), CEL-UCC-00012345, at 8.

⁴⁸⁵ Celsius Network Ltd. (UK) General Ledger.

could “only recoup 10-15 cents on the dollar on [the \$500 million] receivable.”⁴⁸⁶ Mr. Mashinsky told the Examiner that when there was a “run on the bank” against Celsius in 2022, Equities First “was one of the reasons we couldn’t give everyone their coins at once.”⁴⁸⁷

b. Grayscale Bitcoin Trust.

Celsius Network suffered further losses, totaling approximately \$130 million, in connection with its holdings of Grayscale Bitcoin Trust (“GBTC”) shares, and roughly \$160 million across all crypto assets in the Grayscale funds.⁴⁸⁸

GBTC is a security solely invested in and deriving value from the price of BTC. GBTC describes itself as an investment vehicle that enables investors to gain access and exposure to BTC.⁴⁸⁹ GBTC’s investment objective is for the value of its shares to reflect the price performance of BTC, less fees and expenses,⁴⁹⁰ meaning that it issues shares priced to closely reflect the net asset value of the BTC held in the Trust. From its inception in 2018 until February 2021, however,

⁴⁸⁶ Celsius, Asset-Liability Committee (ALCO) and Risk Committee, Internal Company Document (May 25, 2022), CEL-UCC-00042875.

⁴⁸⁷ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁴⁸⁸ Appendix 12; Celsius, Risk Committee (Meeting #4), Internal Company Document (February 5, 2021), CEL-UCC-00042418, at 3 (assessing loss at the time of approximately \$120 million).

⁴⁸⁹ Grayscale, About Us, <https://grayscale.com/gbtc/#:~:text=Grayscale%20AE%20Bitcoin%20Trust%E2%84%A2,and%20passively%20invested%20in%20Bitcoin> (last visited January 3, 2023).

⁴⁹⁰ *Id.*

⁴⁹⁰ Celsius, Grayscale WP 04.30.2022, Excel Spreadsheet (2022), CEL-UCC-00063969.

GBTC traded at a premium in the public market.⁴⁹¹ This means that while institutional investors could obtain newly-issued GBTC shares directly from Grayscale's affiliate, Genesis Global Trading, based on BTC prices, those same shares could be sold in the public stock market at a higher price reflecting a premium to the price of the underlying BTC.⁴⁹²

This trading dynamic for GBTC offered a well-publicized arbitrage opportunity for institutional investors to purchase GBTC from Genesis Global Trading at par and to re-sell it at a premium in the public market, pocketing the premium regardless of whether the underlying price of BTC rose or fell. The only wrinkle was that GBTC shares were issued in private sales open only to accredited investors, so the shares were subject to a legally-required "lock-up" that imposed a waiting period of six months before the shares could be re-sold in the public market.⁴⁹³ To take advantage of the arbitrage, one had to wait for the six-month lock-up period to expire and hope that GBTC still traded at a premium upon expiration.

Celsius first invested in GBTC in July 2020.⁴⁹⁴ Mr. Mashinsky told the Examiner that the GBTC deployment was "something that many other people

⁴⁹¹ Grayscale Bitcoin Trust (BTC) (GBTC), YCharts, https://ycharts.com/companies/GBTC/discount_or_premium_to_nav (last visited January 29, 2023).

⁴⁹² Grayscale Bitcoin Trust, Form 8-k (February 23, 2021), https://www.sec.gov/Archives/edgar/data/1588489/000156459021007545/gbtc-8k_20210218.htm (last visited January 29, 2023).

⁴⁹³ CEL_EXAM-00120595; Grayscale Halts Investments in Bitcoin and Ethereum Trusts, Decrypt (December 21, 2020), <https://decrypt.co/52235/grayscale-halts-investments-in-bitcoin-and-ethereum-trusts> (last visited January 29, 2023).

⁴⁹⁴ Celsius, Grayscale WP 04.30.2022, Excel Spreadsheet (2022), CEL-UCC-00063969.

did, it was just one more strategy for us . . . I don't remember how it came about but it was something we talked about and decided to do.”⁴⁹⁵ On December 11, 2020, Celsius's Risk Committee decided to increase its investment in Grayscale funds to 30% of Celsius's deployed assets.⁴⁹⁶ At the meeting, Mr. Mashinsky “expressed confidence that premiums on Grayscale funds ‘are not going away soon.’”⁴⁹⁷ Moreover, the Risk Committee determined that Celsius's “investments in the Grayscale funds do not incur any credit risk, and are fully hedged against changes in market prices.”⁴⁹⁸ Celsius's GBTC trade was hedged against the price of BTC because it had obligations to users that were denominated in BTC, so the offsetting assets and liabilities rose and fell together based on the price of BTC.⁴⁹⁹ As a result, the profitability of the trade depended entirely on the premium or discount of GBTC relative to the underlying BTC.⁵⁰⁰

⁴⁹⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023). Others reported to have been in the same trade at the time included Three Arrows Capital. Chaparro, Frank, Three Arrows reports more than \$1.2 billion position in Grayscale's GBTC, The Block (January 4, 2021), <https://www.theblock.co/post/89928/three-arrows-reports-more-than-1-2-billion-position-in-grayscale-gbtc> (last visited January 29, 2023).

⁴⁹⁶ Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-00042583, at 1; Grayscale Bitcoin Trust, Grayscale (December 28, 2022), <https://grayscale.com/products/grayscale-bitcoin-trust/> (last visited January 29, 2023).

⁴⁹⁷ Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-00042583, at 1.

⁴⁹⁸ Celsius, Risk Committee (Meeting #1), Internal Company Document (December 11, 2020), CEL-UCC-00061877, at 13.

⁴⁹⁹ Celsius, Risk Committee – Meeting #1, Internal Company Document (December 11, 2020), CEL-UCC-00040827.

⁵⁰⁰ *Id.*

As of February 5, 2021, Celsius had a total value of \$752 million invested in Grayscale assets and characterized that investment as having a “low” risk of loss.⁵⁰¹ But the Grayscale investment quickly soured, as the price of GBTC shifted from a premium of over 40% in late December 2020 to zero premium and then a discount by late February 2021, and proceeded to trade at a widening discount through the filing of this Report:

FIGURE 16: GBTC PRICE RELATIVE TO BTC

GBTC Discount or Premium to NAV: -41.49% for Jan. 23, 2023

VIEW 4,000+ FINANCIAL DATA TYPES:



Note: The above graph shows the discount or premium of GBTC relative to the net asset value (“NAV”) of BTC in the Grayscale Bitcoin Trust, from January 13, 2018 to January 24, 2023. During that time the price of GBTC declined from a premium of more than 60% to a discount of more than 40%.⁵⁰²

In other words, GBTC shares were trading at a premium when Celsius bought them in July and December 2020, but were trading at a discount by early

⁵⁰¹ Celsius, Risk Committee (Meeting #4), Internal Company Document (February 5, 2021), CEL-UCC-00042418, at 3.

⁵⁰² Grayscale Bitcoin Trust (BTC) (GBTC), YCharts, https://ycharts.com/companies/GBTC/discount_or_premium_to_nav (last visited January 29, 2023).

2021.⁵⁰³ By August 2021, GBTC was trading at a 16.5% discount.⁵⁰⁴ Two months later, in October 2021, GBTC was at a 20.6% discount.⁵⁰⁵

According to Mr. Mashinsky, the GBTC losses were attributable to delay. Grayscale was doing “very well,” he explained, but “my team forgot to sell the shares.”⁵⁰⁶ Documents from an August 2021 Assets and Liabilities Committee meeting show that Celsius was planning to sell the shares at a premium or at a 2% discount.⁵⁰⁷ Mr. Mashinsky added that “it was just incompetence.”⁵⁰⁸ He said that Celsius was not tracking the Grayscale shares at the time they should have been sold.⁵⁰⁹ At most, this could only be partially correct. Based on the six-month lock-up, it would have been possible to sell the GBTC obtained in July 2020 before GBTC fell to a discount in February 2021, but the GBTC purchased in December 2020 was still restricted and so could not have been sold until well after a substantial discount emerged.

⁵⁰³ Celsius, Hedging & Investment Strategies Targeted Review, PowerPoint Presentation (February 11, 2022), CEL_EXAM-00120595.

⁵⁰⁴ Celsius, Risk Committee (Parts I and II Minutes), Internal Company Document (August 19, 2021), CEL-UCC-00042605.

⁵⁰⁵ Celsius, Asset-Liability Committee (ALCO) Minutes, Internal Company Document (October 20, 2021), CEL-UCC-00042950.

⁵⁰⁶ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁵⁰⁷ Celsius, Asset & Liabilities Committee, PowerPoint Presentation (August 25, 2021), CEL-UCC-00595263.

⁵⁰⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁵⁰⁹ *Id.*

Mr. Sunada-Wong, who arrived at Celsius in March 2021, had a different recollection. He recalled Celsius's reluctance to "realize" GBTC losses.⁵¹⁰ He also recalled that the discount made Mr. Mashinsky want to buy more GBTC.⁵¹¹ Mr. Sunada-Wong disagreed and advocated against making a "worse decision" by doubling down on Celsius's loss.⁵¹²

c. KeyFi.

Celsius's losses were compounded by its failed business dealings with KeyFi, Inc., an app-based platform for managing decentralized finance,⁵¹³ controlled by Jason Stone.⁵¹⁴ Seeking to benefit from the bull market and burgeoning DeFi market, Celsius and its newly-formed subsidiary Celsius KeyFi LLC ("Celsius KeyFi") entered into an Asset Purchase Agreement to purchase KeyFi, Inc.'s assets, effective December 31, 2020.⁵¹⁵ Celsius also agreed to retain Mr. Stone's company, KeyFi, to engage in coin staking and other coin deployment services for Celsius.⁵¹⁶ Prior to finalizing this acquisition, KeyFi began deploying Celsius's coins on Celsius's behalf.⁵¹⁷ As a result of these transactions, which

⁵¹⁰ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ About, KeyFi (December 28, 2022), <https://keyfi.com/about/>.

⁵¹⁴ Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 19-20.

⁵¹⁵ *Asset Purchase Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-4].

⁵¹⁶ *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5].

⁵¹⁷ *Adversary Complaint* [Dkt. 581], at ¶ 18.

are now the subject of an adversary proceeding pending in the Bankruptcy Court, Celsius alleges that it has lost “tens of millions of dollars or more.”⁵¹⁸

According to Mr. Holert, there was no “process” involved in the KeyFi deal, which he saw as “forced” on Celsius by Mr. Mashinsky and Mr. Cohen-Pavon, over the objection of Chief Financial Officer Urata-Thompson.⁵¹⁹ Mr. Mashinsky, had a prior relationship with Mr. Stone and had invested in—and lost money in—Mr. Stone’s prior company, Battlestar Capital. As a result of this relationship, Mr. Mashinsky introduced Mr. Stone to Celsius and even provided Mr. Stone with office space in New York.⁵²⁰ Despite his initial losses with Mr. Stone, Mr. Mashinsky told the Examiner that he believed Mr. Stone would be a good person to invest with again given that many entrepreneurs fail before they succeed.⁵²¹ Mr. Mashinsky and Mr. Cohen-Pavon then drafted an

⁵¹⁸ *Amended Adversary Complaint*, Case No. 22-1139 [Dkt. 10], at ¶ 61.

⁵¹⁹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023). There is inconsistency with respect to Mr. Cohen-Pavon’s involvement with KeyFi. He told the Examiner that the KeyFi relationship pre-dated his arrival at Celsius, and that he became involved in order to “beef up” the agreement. Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022). Mr. Holert described the dynamic differently. He stated that Mr. Mashinsky and Mr. Cohen-Pavon came up with the agreements themselves, along with Jason Stone, without bringing any “financial people” into the process. Mr. Holert then wrote “a structure for what Alex and Roni had agreed” after the fact, including defining key terms such as how to measure “profit sharing.” Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁵²⁰ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁵²¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Office – Celsius, January 5, 2023). Mr. Mashinsky cited Travis Kalanick, co-founder and former CEO of Uber, as an example.

agreement involving “20% profit sharing” and shared it with Mr. Holert, who did not consider it “a proper agreement” and revised it.⁵²² But before Celsius signed the agreement, it had begun allocating coins to Mr. Stone to deploy.⁵²³

Mr. Mashinsky justified the KeyFi transactions as filling Celsius’s gaps. Mr. Mashinsky explained that KeyFi was “focused on things we don’t do, our deployment team did the traditional stuff but didn’t do [yield] farming[.] [Stone] was knowledgeable there and he knew the people and could get in early.” Mr. Mashinsky added, “we felt we could get higher yields by getting in early.” Mr. Mashinsky said he tasked Celsius’s Head of Security and others to “watch it and track the wallets . . . in DeFi you can track everything.”⁵²⁴

According to Celsius, in late November 2020, Mr. Stone and KeyFi “suffered significant liquidation based on their mismanagement of [Celsius’s] loan collateral.”⁵²⁵ Similarly, notes from Celsius’s first Risk Committee meeting on December 11, 2020—before the Asset Purchase Agreement was signed on January 11, 2021, effective December 31, 2020—indicate that Celsius was aware that there was “risk involved” in transacting with KeyFi. But the notes from the Risk Committee also claimed that the “returns generated are

⁵²² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁵²³ *Id.*

⁵²⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁵²⁵ *Adversary Complaint* [Dkt. 581], at ¶ 22.

compensating Celsius for the risk.”⁵²⁶ Despite Celsius’s concerns and knowledge of the November 2020 liquidation event, Celsius KeyFi executed the Asset Purchase Agreement and Mr. Stone was appointed Chief Executive Officer of Celsius KeyFi.⁵²⁷

The post-acquisition relationship with KeyFi and Mr. Stone proved to be tumultuous. According to Celsius, both pre- and post-acquisition, Mr. Stone was required to obtain approval from Celsius before deploying Celsius/Celsius KeyFi assets. Mr. Mashinsky explained the process as entailing Mr. Stone receiving approval for an investment, followed by Mr. Stone “deploy[ing] on a protocol, [Celsius Chief Security Officer Shiran Kleiderman] check[ing] it, and then Connor Nolan or somebody would do what Risk agreed to do.”⁵²⁸ According to Mr. Mashinsky, “the process worked well until the liquidation incident”—that is, Mr. Stone “got liquidated [on February 23, 2021] and we didn’t know about it.”⁵²⁹ This, Mr. Mashinsky explained, was Mr. Stone’s second liquidation, the first one occurring in November 2020 when Mr. Stone called Celsius’s “desk and they fixed it.”⁵³⁰ But “the second time,” Mr. Mashinsky continued, “[Mr. Stone] just started siphoning money off of the account, stealing money.”⁵³¹ As a result,

⁵²⁶ Celsius, Risk Committee (Meeting #1), Internal Company Document (December 11, 2020), CEL-UCC-00061877, at 14.

⁵²⁷ Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 20.

⁵²⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Office – Celsius, January 5, 2023).

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ *Id.*

Celsius contends it was left in a “nearly 30,000 ETH short position of which it had no notice” and also suffered “a substantial liquidation penalty.”⁵³²

Celsius came to believe that Mr. Stone, along with others at Celsius KeyFi, deployed certain assets in “a manner not authorized” by the parties’ original agreement.⁵³³ Celsius also alleges that KeyFi siphoned assets by investing in NFTs, which was not authorized by Celsius.⁵³⁴ Mr. Mashinsky explained that KeyFi was able to invest in NFTs without Celsius’s knowledge because Celsius’s tracking software did not track NFTs. According to Mr. Holert, Mr. Stone also did not, as he had promised, deliver a “wormhole” program that would have enabled Celsius to automatically track KeyFi’s deployments.⁵³⁵ Without that information, Celsius could not hedge KeyFi’s deployment activities.⁵³⁶

Within months of the acquisition, on March 26, 2021, Celsius KeyFi’s board passed a resolution directing KeyFi and Mr. Stone to return all Celsius

⁵³² *Amended Adversary Complaint*, Case No. 22-1139 [Dkt. 10], at ¶ 65.

⁵³³ Examiner Interview of Alex Mashinsky (Former Chief Executive Office – Celsius, January 5, 2023).

⁵³⁴ *Amended Adversary Complaint*, Case No. 22-1139 [Dkt. 10], at ¶¶ 32-40; Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 19-20.

⁵³⁵ *Declaration of Patrick Holert in Support of Celsius’ Motion for Preliminary Injunction*, Case No. 22-1139 [Dkt. 25], at ¶ 4; *Reply Declaration of Patrick Holert in Further Support of Celsius’ Motion for Preliminary Injunction*, Case No. 22-1139 [Dkt. 45], at ¶ 7; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁵³⁶ *Reply Declaration of Patrick Holert in Further Support of Celsius’ Motion for Preliminary Injunction*, Case No. 22-1139 [Dkt. 45], at ¶ 7. Mr. Holert further asserted that, even if Celsius had sufficient information, the responsibility for hedging fell with KeyFi because Mr. Stone assured Celsius that he would do so. *Id.* at ¶ 6.

KeyFi and Celsius assets⁵³⁷ so that Celsius could perform an accounting and establish enhanced security protocols.⁵³⁸ Celsius alleges that KeyFi and Mr. Stone did not comply. KeyFi and Mr. Stone allege, among other things, that Celsius authorized KeyFi's trading activity and therefore was equally at fault for the losses of customer funds.⁵³⁹ Further, Mr. Stone "refused to return [] control" of assets made available to him by virtue of his role as Chief Executive Officer.⁵⁴⁰ As of the filing of this Report, Celsius's motion for a preliminary injunction to prevent Mr. Stone's use of various "Utilized Assets" has been fully briefed and is pending with this Court.⁵⁴¹

d. StakeHound.

Celsius also suffered a considerable loss of assets in connection with its relationship with StakeHound, a staking platform that utilized Ethereum's DeFi network.⁵⁴² On January 20, 2021, Celsius engaged StakeHound to operate Celsius's ETH2 staking operations.⁵⁴³ Staking ETH on the Ethereum network

⁵³⁷ *Celsius KeyFi Board Resolution* dated March 26, 2021, Case No. 22-1139 [Dkt. 24-7].

⁵³⁸ *Declaration of Patrick Holert in Support of Celsius' Motion for Preliminary Injunction*, Case No. 22-1139 [Dkt. 25], at ¶ 5.

⁵³⁹ *Answer*, Case No. 22-1139 [Dkt. 55], at 14-15; Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 19-20.

⁵⁴⁰ Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 19-20.

⁵⁴¹ *Celsius Network Limited and Celsius KeyFi LLC v. Jason Stone and KeyFi Inc.*, 22-01139 (S.D.N.Y Bank. August 23, 2022).

⁵⁴² StakeHound, LinkedIn (December 28, 2022), [https://www.linkedin.com/ Service Agreement](https://www.linkedin.com/ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. company/stakehound.

⁵⁴³ Disclosure Letter (December 3, 2021), CEL-UCC-00025824, at 14.

enables one to participate in the process of validating new blocks to be added to the Ethereum blockchain and to share in rewards for creating those new blocks.

Celsius transferred roughly 25,000 ETH to StakeHound, so that StakeHound could manage the technical process of staking that ETH and validating new blocks to receive rewards.⁵⁴⁴ However, on May 3, 2021, StakeHound and Fireblocks notified Celsius that the keys to the validators initiated by StakeHound had been lost, and as a result Celsius's ETH was rendered inaccessible.⁵⁴⁵ According to its internal documentation, Celsius lost \$105 million as a result of this incident.⁵⁴⁶

C. Celsius Struggled To Find New Deployment Opportunities To Generate Returns To Support Its Rewards.

Beginning in the summer of 2021, Celsius experienced significant financial losses as the crypto market began to turn and Celsius found it more and more difficult to fully deploy its crypto assets under management in its usual investment markets. This compounded the problem of Celsius's persistently high reward rates. During an internal Slack communication in April 2021, a Celsius employee after a deployment call asked, "[D]on't we have too many coins we're paying interest on not deployed or earning yield? [H]ow are we profitable?"⁵⁴⁷ Mr. Tappen responded, "[W]e aren't [sic]."⁵⁴⁸ Likewise, a July 2021 Risk

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ Celsius, Business Outlook - Restructuring, Capital and Liquidity Update, Internal Company Document (June 2, 2022), CEL-UCC-00012345.

⁵⁴⁷ Celsius, Slack (April 9, 2021), CEL-UCC-00238498, at 6.

⁵⁴⁸ *Id.*

Committee report noted that 36% of Celsius's assets (16.5% excluding Treasury CEL) were "non-yielding" in that they provided Celsius with no revenue.⁵⁴⁹ Celsius's non-yielding assets included some of Celsius's holdings of BTC and ETH; smaller coins like TrustToken; and other assets like NFTs, "Grayscale Trusts, CEL liabilities, [and] equity investments in companies that don't generate yield."⁵⁵⁰

By October 2021, the Assets and Liabilities Committee had become concerned about "the constant increase in undeployed assets" and began to discuss various options for deploying those assets.⁵⁵¹ BTC was a particular challenge. Celsius had long offered top-of-the-market reward rates for BTC to attract customers but faced limited deployment options. According to the Examiner's review of Celsius's historical rates as posted on its website, during the first quarter of 2021, Celsius offered reward rates of 4.74% for BTC, eventually dropping the rate to 3.51% through July 2021.⁵⁵² Starting in

⁵⁴⁹ Celsius, Risk Committee Meeting (Part I), Internal Company Document (July 22, 2021), CEL-UCC-00041019, at 25. Celsius, Exco Meeting (July 13, 2021), CEL-UCC-00274079 (noting ongoing project of "Working w/ CFO on . . . Limit on non-yielding assets as a % of assets"). At various times, BTC and ETH were both mentioned as "non-yielding" assets. Celsius, Slack (May 1, 2022), CEL-UCC-00142305.

⁵⁵⁰ Sunada-Wong, Rodney, Proposed ALCO limits (bare-bones), Email (June 29, 2021), CEL_EXAM-00060051; Celsius, Assets and Liabilities Committee Meeting Minutes, Internal Company Document (July 14, 2021), CEL_EXAM-00140256, at 1; Examiner Interview of Jason Perma (Former Vice President of Treasury – Celsius, January 11, 2023).

⁵⁵¹ Celsius, Assets and Liabilities Committee Meeting Minutes, Internal Company Document (October 20, 2021), CEL-UCC-00042950, at 4.

⁵⁵² Earn, Celsius, [https://web.archive.org/web/20220426012409/https:// Service Agreement](https://web.archive.org/web/20220426012409/https://ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. celsius.network/ *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. earn (last visited January 29, 2023).

July 2021, Celsius implemented a two-tiered rate structure of between 5% and 6.2% on up to one BTC and a lower rate of 3 to 3.5% for any BTC deposits thereafter. Celsius eventually returned to high overall rates of 6.5% by the end of April 2022.⁵⁵³

Mr. Perman called BTC “the elephant in the room” because “it dominated the balance sheet.”⁵⁵⁴ The problem, he explained, was that it was hard to deploy: it was “not a good piece of collateral” and could only be lent to institutions; when that opportunity dried up, BTC deposits came in and “nobody did anything with it.”⁵⁵⁵ By the end of 2021, Mr. Mashinsky told Chief Investment Officer van Etten to “quote [*i.e.*, to offer terms] more aggressively to win new clients” and to “deploy more BTC.”⁵⁵⁶

The issues with deploying BTC, and its impact on NIM, continued into the first two quarters of 2022. A January 2, 2022 Asset and Liability Committee report explained that “[m]aximizing BTC deployment across every available BTC will still yield a negative BTC NIM.”⁵⁵⁷ In a Slack conversation that same day, Mr. Perman and Mr. Tappen discussed analysis showing that when it came to Celsius’s largest crypto asset—BTC—Celsius “literally cant [*sic*] be profitable”

⁵⁵³ *Id.*

⁵⁵⁴ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

⁵⁵⁵ *Id.*

⁵⁵⁶ Mashinsky, Alex, Re: Quick Recap, Email (December 29, 2021), CEL_EXAM-00057186.

⁵⁵⁷ Celsius, ALCO, PowerPoint Presentation (January 2, 2022), CEL-UCC-00042695.

even at “max allocation.”⁵⁵⁸ As of May 27, 2022, BTC comprised 35% of Celsius’s assets under management, of which \$2.5 billion was deployed as collateral and \$200 million was undeployed, with a recorded NIM of -0.27%.⁵⁵⁹

Celsius’s managers understood the problem of customer growth in a turning market and even addressed the topic publicly. In an August 19, 2020 post appearing on Celsius’s website, former Chief Financial Officer Urata-Thompson raised the rhetorical question: “Is there such a thing as growing too fast?”⁵⁶⁰ She added that “[a]lthough it is a great problem to have, you bet there is” and explained that “[w]e are committed to continuing to reward customers, but if we do not earn enough on our end, it is not hard to imagine what happens next.”⁵⁶¹ Mr. Perman, likewise, believed that the solution to the deployment problem, given market conditions was to slow customer growth and thus reduce assets under management.⁵⁶² Mr. Mashinsky and other senior level managers rejected Mr. Perman’s suggestion and continued to focus on adding new

⁵⁵⁸ Celsius, Slack (January 3, 2022), CEL_EXAM-00171335, at 24; Sabo, Ron, Re: Bitfinex and FTX recap for the week Apr 22 to Apr 29, Email (May 2, 2022), CEL-UCC-00114541.

⁵⁵⁹ See Appendix 13, Celsius Waterfall Report – Coins (May 27, 2022).

⁵⁶⁰ Urata-Thompson, Harumi, What We Do & How We Do It: The Celsius business model, explained, Celsius (August 19, 2020), [https://web.archive.org/web/20201126015631/Service Agreement](https://web.archive.org/web/20201126015631/Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. <https://celsiusnetwork.medium.com/what-we-do-how-we-do-it-9a82124f7159> (last visited January 29, 2023).

⁵⁶¹ *Id.*

⁵⁶² Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

customers.⁵⁶³ Mr. Mashinsky took this position even though he acknowledged to the Examiner that, by the end of 2021, Celsius was “drowning in customer assets” and lacked opportunities to deploy those assets.⁵⁶⁴

D. Tensions Between Profitability And Growth.

Celsius struggled with a constant tension between profitability and growth, both of which Mr. Mashinsky demanded that Celsius prioritize. Mr. Sunada-Wong described a “mandate” for employees “in the trenches” to “figure out how to improve NIM.”⁵⁶⁵ As he explained it, Celsius was concerned that the lending market would “bear certain yield” for crypto assets, and Celsius did not have the power to change “what the market will bear.”⁵⁶⁶ But Celsius did have the power to cut reward rates.⁵⁶⁷ So the recommendation “would come back to cut rates,” and the response from Mr. Mashinsky was: “we can’t cut the rates” because Celsius would lose customers to BlockFi.⁵⁶⁸

Notes from a September 8, 2021 Assets and Liabilities Committee meeting showed that, as of the September 3, 2021 Freeze Report, Celsius was in a

⁵⁶³ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023); Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

⁵⁶⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁵⁶⁵ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

“negative net position” (excluding CEL) of over \$440 million.⁵⁶⁹ From October 2021 through January 2022, Celsius failed to reach positive net yield.⁵⁷⁰

Mr. Mashinsky blamed his employees for Celsius’s challenges. On January 29, 2022, Mr. Mashinsky complained that Mr. van Etten’s CeFi team “continue[d] to lose money almost every week.”⁵⁷¹ Mr. Mashinsky wanted Mr. van Etten to “deliver positive daily and weekly P&L,” to “restrict [his] team from doing ANY directional trading,”⁵⁷² and to lower the cost of capital by obtaining an Alameda Research term loan for \$1 billion in USDT (stablecoin) deployments (in order to “cross the \$2B borrow limit”), rather than slowing growth or reducing customer rewards.⁵⁷³ On February 1, 2022, Mr. Mashinsky asked Mr. van Etten for his plan to make Celsius’s NIM and profit and loss positive.⁵⁷⁴

E. Celsius Began Chasing Yield.

Mr. Mashinsky acknowledged that the complexity of the business grew quickly and that “crypto and non-crypto people didn’t agree on how to handle everything,” but claimed that Celsius’s “focus was always on making sure we

⁵⁶⁹ Celsius, ALCO Minutes, Internal Company Document (September 8, 2021), CEL-UCC-00042988.

⁵⁷⁰ Alisie, Adrian, Re: NIM & Trade Execution Analysis, Email (Jan. 29, 2022), CEL_EXAM-00059693.

⁵⁷¹ Mashinsky, Alex, Re: Daily CeFi Recap (Jan28th): Daily P&L: -\$0.1M, Email (January 29, 2022), CEL_EXAM-00057241.

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ Mashinsky, Alex, Re: Daily CeFi Recap (Jan28th): Daily P&L: -\$0.1M, Email (February 1, 2022), CEL_EXAM-00057195.

could return assets to customers, that we were not taking too much risk.”⁵⁷⁵ Yet Celsius’s persistent inability to generate enough yield on its deployments and its overall reluctance to reduce reward rates “result[ed] in . . . pressure to deploy into higher risk activities.”⁵⁷⁶ In response to this pressure, Celsius’s business activities changed in four primary ways.

First, in response to a decline in Celsius’s institutional loan book that began in April 2021, Celsius sought to “grow the book by expanding client base and by selectively increasing limits.”⁵⁷⁷ From July 2021 through early 2022, Celsius made 19 institutional loans—including unsecured loans to Anchorage Hold LLC, Dunamis Trading (Bahamas Ltd), Equities First Holdings, Flow Traders BV, Galaxy Digital LLC, and Wintermute Trading Ltd—which resulted in an overall increase in Celsius’s institutional lending portfolio over that period.⁵⁷⁸

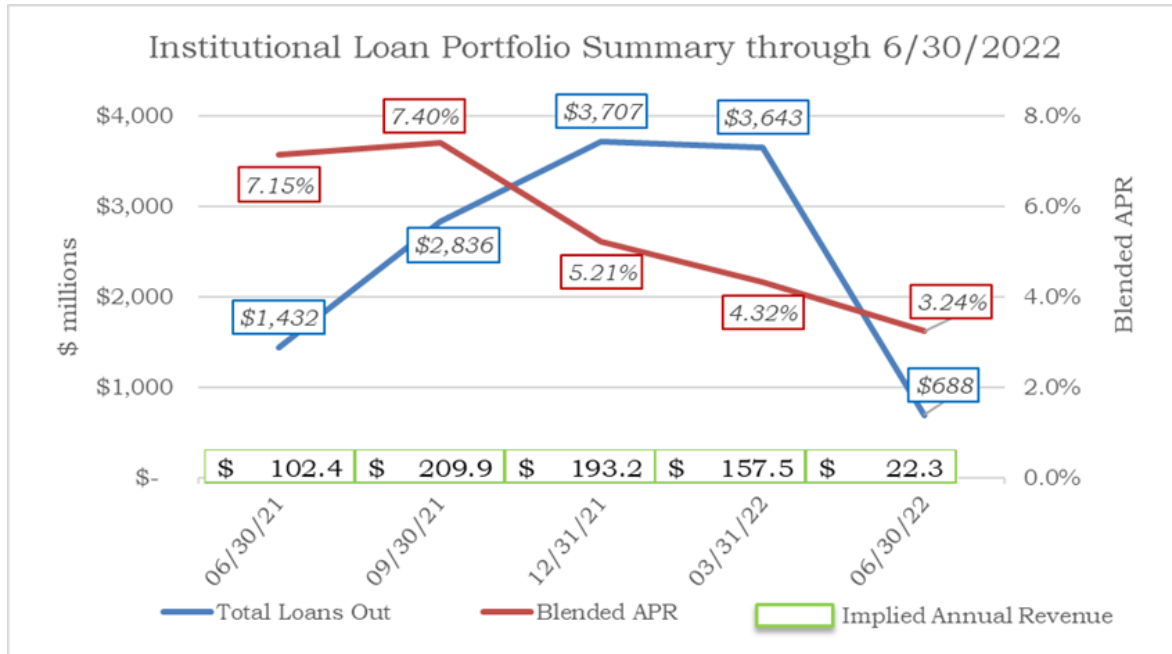
⁵⁷⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁵⁷⁶ Celsius, Memo, Internal Company Document (2022), CEL_EXAM-00053067.

⁵⁷⁷ Celsius, Risk Committee Meeting (Part II), Internal Company Document (July 22, 2021), CEL-UCC-00041050, at 11.

⁵⁷⁸ Celsius, Institutional Lending Credit Exposure Report, Internal Company Document, CEL-UCC-00512378 (“Institutional Lending Credit Exposure Report (as of June 10, 2022)”).

FIGURE 17: CELSIUS INSTITUTIONAL LOAN REVENUE



Note: This chart reflects loan amounts, stated annual percentage rates and implied annual revenue for Celsius’s institutional loan portfolio from the second quarter of 2021 to the second quarter of 2022.

Second, Celsius began concentrating its positions in high-yield deployments.⁵⁷⁹ Mr. Holert stated that when he arrived at Celsius in February 2020 and during his first six to eight months, Celsius’s primary revenue generation came from institutional loans.⁵⁸⁰ Except for loans to retail customers, he explained, institutional loans “was all we did.”⁵⁸¹ As the below figure shows, by May 2021, Celsius had begun to deploy assets on exchanges, with 6% of its Assets Under Management (“AUM”) deployed. From November 2021 to

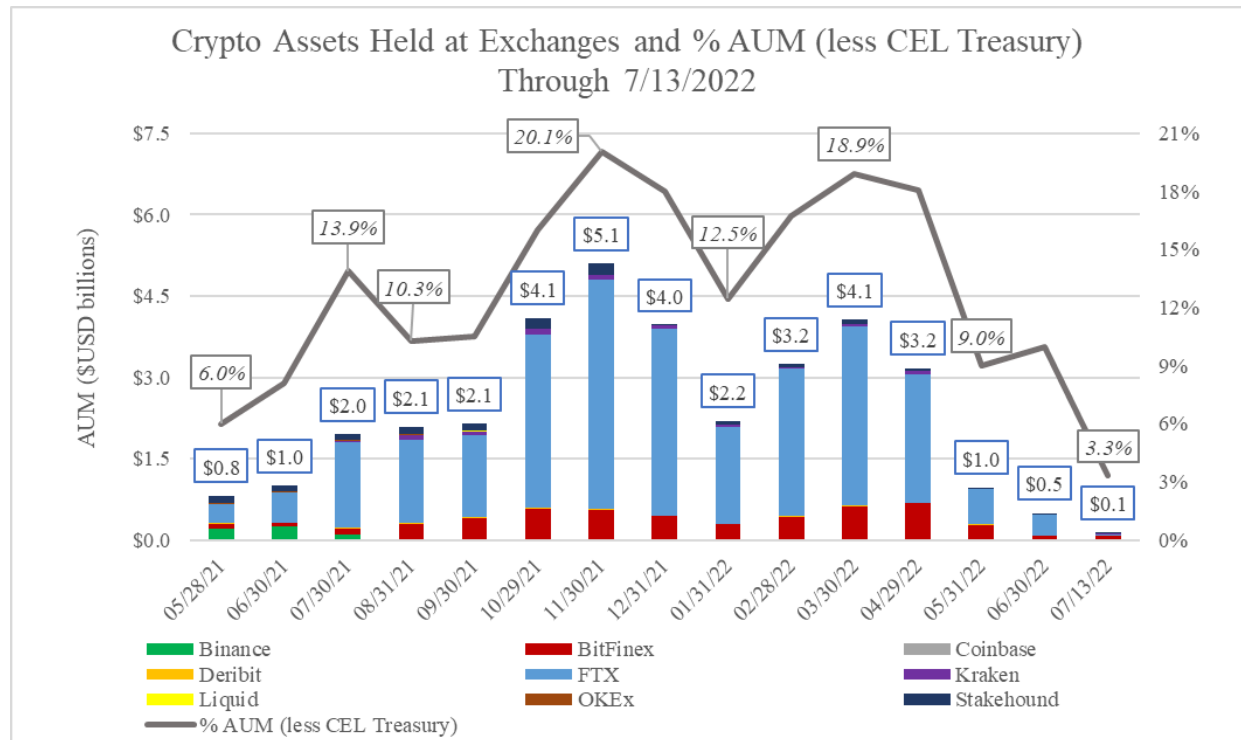
⁵⁷⁹ Celsius, Memo, Internal Company Document (2022), CEL_EXAM-00053067.

⁵⁸⁰ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁵⁸¹ *Id.*

March 2022, that number bounced between 10% (in December 2021) and 20% (in November 2021 and March 2022).

FIGURE 18: CELSIUS CRYPTO ASSETS HELD AT EXCHANGES



Note: This chart depicts the amounts deployed by Celsius over time on exchange platforms, both by dollar and percentage of AUM.

Celsius's NIM from deployments on these exchanges was highly variable and subject to significant weekly variability. At the January 5, 2022 Executive Committee meeting, for example, Celsius reported a NIM of 10.65% from exchange deployments.⁵⁸² Two weeks later, on January 18, 2022, the reported NIM for exchanges had fallen to -6.81% that week.⁵⁸³ By April 2022, an Executive

⁵⁸² Celsius, Weekly ExCo Meeting – January 5, 2022 (January 2022), CEL-UCC-00277520. The company reported a 3.78% NIM for CeFi generally at an ALCO meeting that same day.

⁵⁸³ *Id.*; Celsius, Weekly ExCo Meeting – January 18, 2022 (January 2022), CEL-UCC-00277060.

Committee Strategic Planning presentation reported an annual NIM of -3.49% for exchange deployments.⁵⁸⁴

Adrian Alisie, who was hired as Head of Internal Audit, conducted an internal review of the CeFi Trading, Hedging, and Investment Strategies, discussed further in Part Two, Section V.E.⁵⁸⁵ His review identified several contributing factors to the continued negative NIM on exchange deployments.⁵⁸⁶ For example, the trading desk lacked a clear governance structure, internal processes and controls, and resources that would have allowed Celsius to conduct exchange and other CeFi trading at a sophisticated level.⁵⁸⁷ Additionally, Celsius failed to implement a sufficient hedging strategy for its increasing exposure to BTC and inability to generate yield.⁵⁸⁸ According to a February 2, 2022 Assets and Liabilities Committee presentation, if Celsius sold BTC to fund expenses, it would compound its “negative BTC NIM” by requiring Celsius to “buy back BTC to meet [its assets and liabilities] deficit.”⁵⁸⁹

Similarly, Celsius began to increasingly rely on under- and wholly-uncollateralized institutional loans which provided higher interest rates but more risk than collateralized loans. In December 2020, only approximately 14%

⁵⁸⁴ Celsius, April 2022 Outlook, Presentation (2022), CEL-UCC-00242264.

⁵⁸⁵ Celsius, CeFi Trading, Hedging & Investment Strategies Targeted Review (February 18, 2022), CEL-UCC-00071959.

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁵⁸⁹ Celsius, Asset-Liability Committee (ALCO), PowerPoint Presentation (February 2, 2022), CEL-UCC-00042718.

of Celsius's institutional loans were wholly unsecured.⁵⁹⁰ By June 2021, it was routine for one-third or more of Celsius's institutional loan portfolio to consist of unsecured loans.⁵⁹¹ On May 12, 2022, the Risk Committee assigned the institutional portfolio a BB rating, which under Celsius's internal credit rating system meant "[s]emi-adequate capacity to repay debt."⁵⁹² The Risk Committee also noted that the portfolio compared "poorly" against the Bank of America U.S. High Yield Spread, and that, as of that date, 48% of Celsius's institutional loan portfolio consisted of uncollateralized loans.⁵⁹³

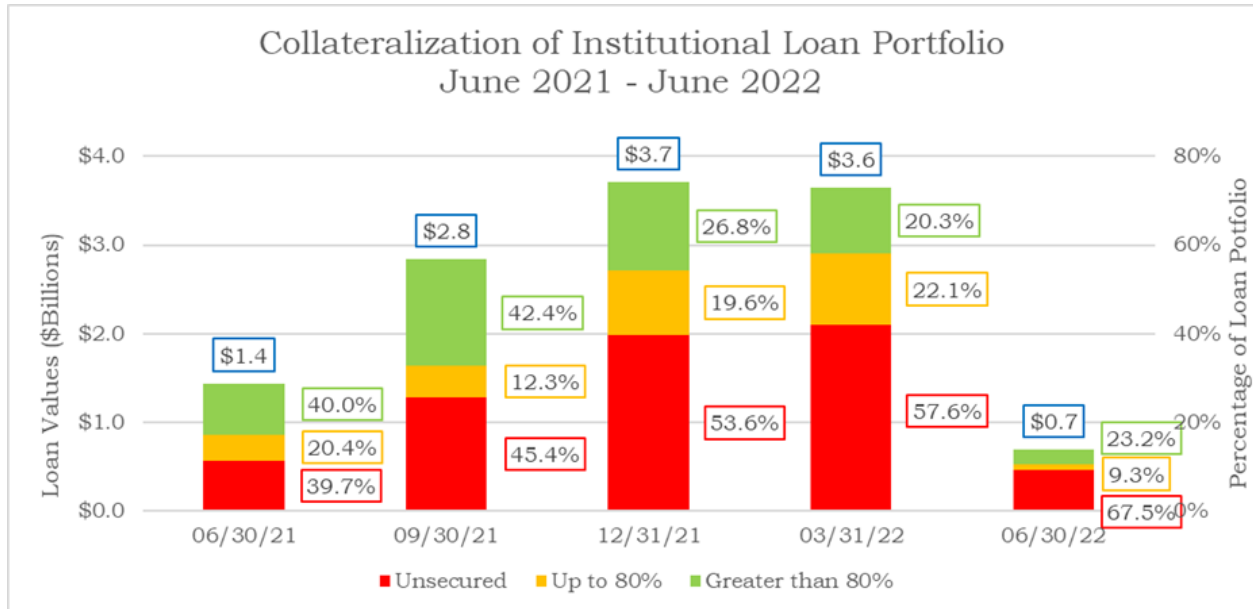
⁵⁹⁰ Celsius, Risk Committee – Meeting 1, Internal Company Document (December 11, 2020), CEL-UCC-00040827, at 10.

⁵⁹¹ Celsius, Risk Committee Meeting Agenda, Internal Company Document (June 11, 2021), CEL-UCC-00040928.

⁵⁹² Celsius, Network Credit Policy (June 9, 2021), CEL-UCC-0007504, at 10.

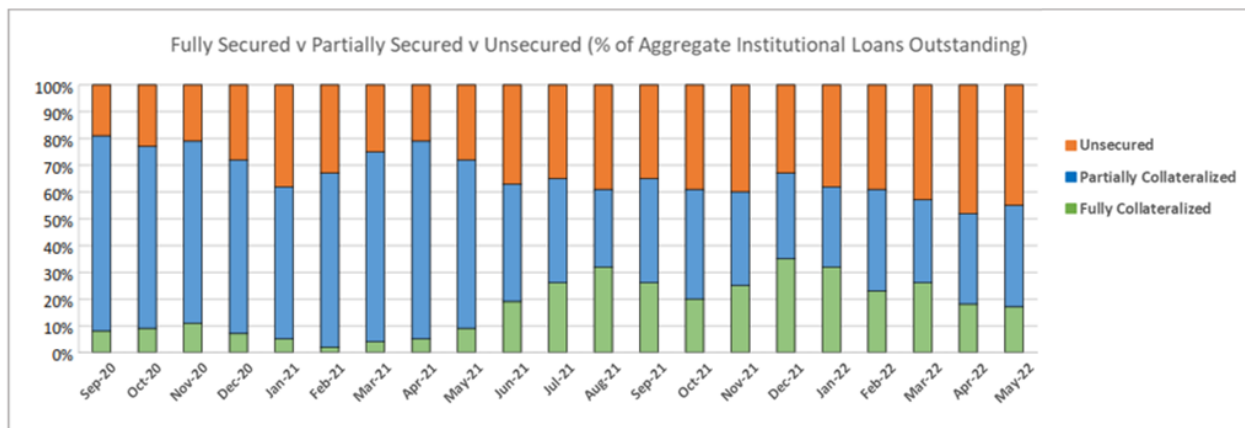
⁵⁹³ Celsius, Risk Committee Meeting (Part A), Internal Company Document (May 12, 2022), CEL-UCC-00042349, at 31.

FIGURE 19: COLLATERALIZATION OF INSTITUTIONAL LOAN PORTFOLIO



Note: This chart depicts the composition of Celsius's institutional loan portfolio over time in three groupings: unsecured, 0-80% secured, and over 80% secured.

Celsius's internal analysis reflects the consistent and increasing presence of unsecured loans in Celsius's institutional loan portfolio:⁵⁹⁴



Moreover, while its fully collateralized loans appeared to increase in 2021 and into 2022, this increase corresponded with Celsius accepting collateral from

⁵⁹⁴ Celsius, ftx_stressed_balance_1d, Excel Spreadsheet (2022), CEL-UCC-00241327.

FTX, a crypto asset exchange that has since filed for bankruptcy, that did not provide substantial security. Celsius's internal analysis reflects that the largest change in collateral during this time related to increasing acceptance of certain other crypto assets from FTX: Serum (SRM) and the FTX token (FTT).

Celsius recognized that the price of SRM and FTT was largely dependent on FTX, and therefore failed to provide meaningful security against a default by FTX⁵⁹⁵—the same type of risk that led lenders not to accept CEL as collateral from Celsius. A presentation for the October 7, 2021 Risk Committee Meeting explained that “100% of the ~\$520M of FTT coins pledged to Celsius are posted by Alameda [Research],” a trading firm affiliated with FTX that also has filed for bankruptcy, and that \$814.4 million in loans to Alameda Research were partially collateralized by FTT.⁵⁹⁶ Noting the close relationship between Alameda Research and FTX, the presentation explained that “Celsius has wrong-way risk exposure to both Alameda and FTX” because credit deterioration at Alameda Research or FTX would also be reflected in diminished value of the FTT posted as collateral.⁵⁹⁷ It proposed to require more overcollateralization for FTT-backed loans or other collateral that did not present the same risk.⁵⁹⁸ Alameda Research also posted

⁵⁹⁵ Celsius, Risk Committee Meeting, Internal Company Document (October 7, 2021), CEL-UCC-00041354, at 11.

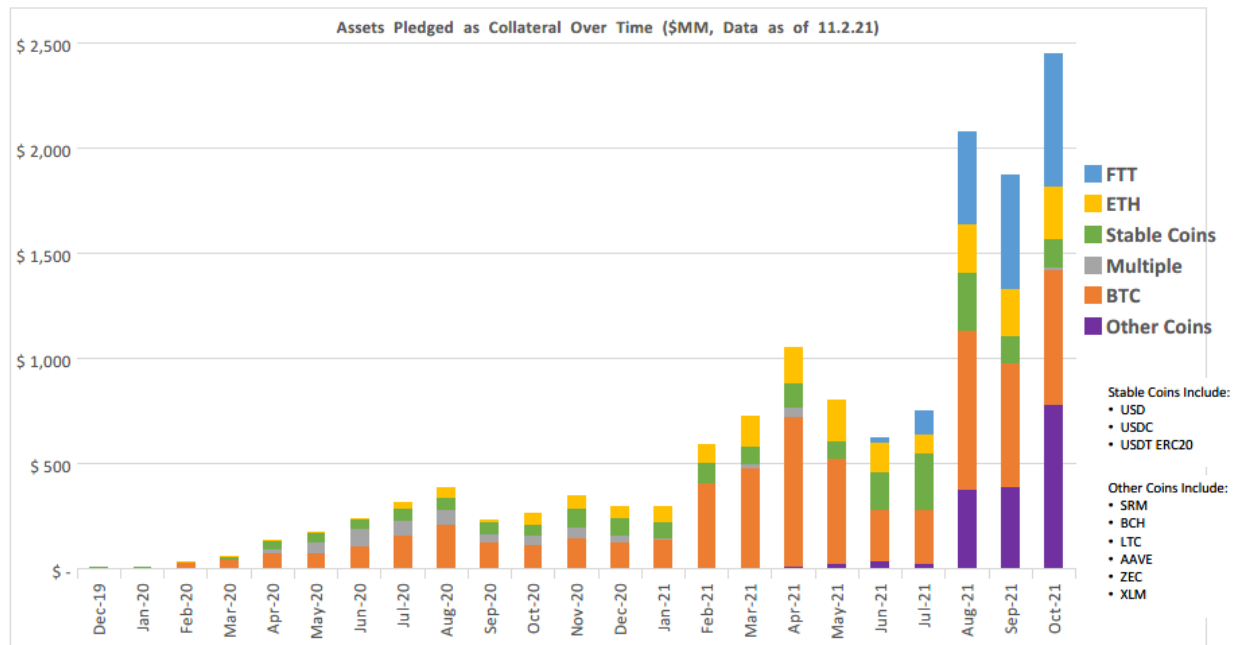
⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

collateral in the form of SRM, which was also closely tied to FTX and Alameda Research, which Celsius recognized presented the same wrong-way risk.⁵⁹⁹

FIGURE 20: ASSETS PLEDGED AS COLLATERAL (12/19 – 10/21)



Note: This chart presented to Celsius's Risk Committee describes Celsius's deployment of coins as collateral for loans over time.⁶⁰⁰

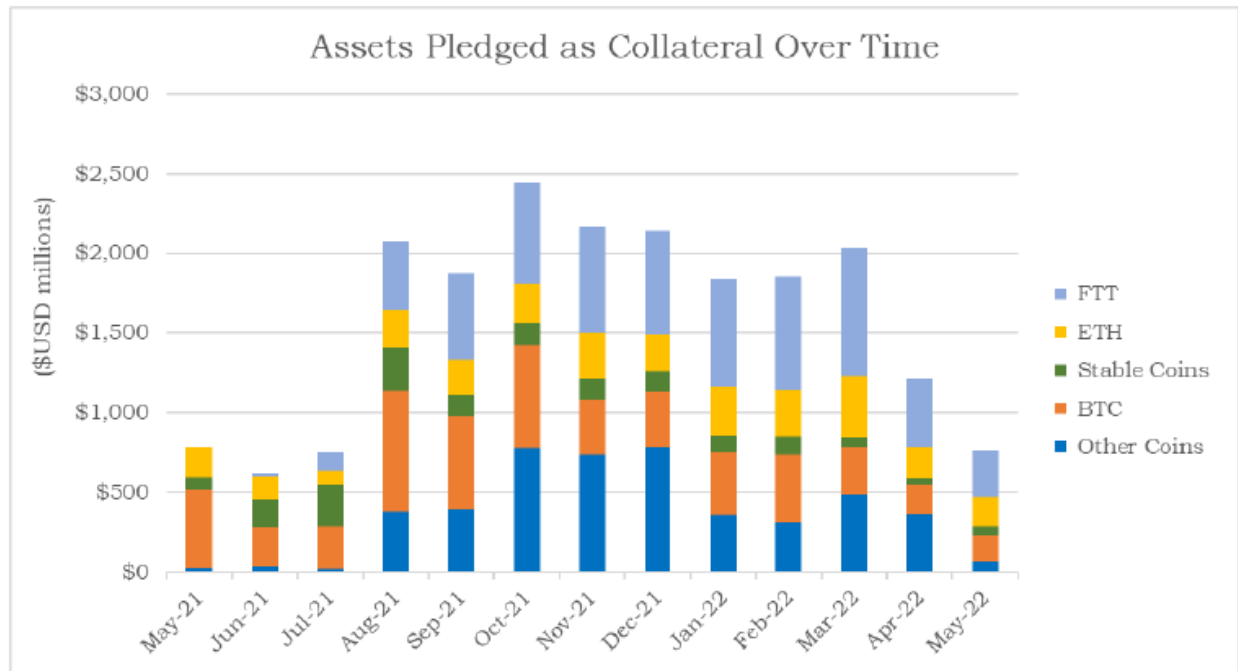
The wrong-way risk collateral of FTT and SRM for loans to Alameda Research accounted for a substantial portion of the total collateral received by Celsius from Fall 2021 until shortly before Celsius's collapse. In October 2021,

⁵⁹⁹ Celsius, Risk Committee Meeting (Part II), Internal Company Document (February 3, 2022), CEL-UCC-00041855, at 19.

⁶⁰⁰ CEL-UCC-00041488.

FTT accounted for approximately 27% of total pledged collateral.⁶⁰¹ By April 25, 2022, FTT and SRM accounted for over 50% of total pledged collateral.⁶⁰²

FIGURE 21: ASSETS PLEDGED AS COLLATERAL (1/21 – 4/22)



Note: This chart describes Celsius's deployment of coins as collateral for loans over time.⁶⁰³ It is derived from a spreadsheet of data prepared by Celsius and presented in the format consistently used for Risk Committee presentations.⁶⁰⁴

Consistent with Celsius's desire to produce a higher yield, Celsius adjusted its deployment mix and changed its DeFi exposure. Slides from the July 6, 2021 Risk Committee meeting show that Celsius's DeFi exposure at that point was

⁶⁰¹ Celsius, Risk Committee Meeting, Internal Company Document (October 7, 2021), CEL-UCC-00041354, at 11.

⁶⁰² Celsius, Risk committee Meeting Part A, Internal Company Document (April 28, 2022), CEL-UCC-00042288.

⁶⁰³ CEL-UCC-00243127.

⁶⁰⁴ Celsius, Risk Committee Graph Templates, Excel Spreadsheet (2021), CEL_EXAM_00059359 (first chart); Celsius, ftx_stressed-balance_1d, Excel Spreadsheet (2022), CEL-UCC-00241327 (second chart); Celsius, Risk Committee Meeting Part A, Internal Company Document (April 28, 2022), CEL-UCC-00042288.

roughly \$8 million, which exposure increased over the coming months as detailed below.⁶⁰⁵

Third, Celsius engaged in deployments that triggered risk concerns. For example, Mr. Mashinsky complained at the end of 2021: “We have over \$1.5B of undeployed [sic] or underdeployed assets and a long list of approved platforms with 0 balances on them . . . [L]ets max out deployment of stables and ETH on approved and verified platforms . . . so we can move NIM to positive territory.”⁶⁰⁶ Shortly thereafter, members of Celsius’s deployment and Risk Teams discussed “allocating more to existing DeFi investment where we have bandwidth.”⁶⁰⁷ As part of that process, Celsius’s DeFi desk proposed \$1.1 billion worth of BTC and ETH deployments.⁶⁰⁸ Celsius’s Risk Team raised concerns and initially denied a proposed deployment of “\$300M ETH to Anchor on Terra” on the basis that it would increase Celsius’s staked ETH exposure to a level at which the Risk Team was not comfortable.⁶⁰⁹

Ultimately, however, the Risk Team relented. In a summary email, Mr. van Etten noted that “[o]nce we get to ‘fully deployed’ or close to it, we can start

⁶⁰⁵ Celsius, Risk Committee – Part 2, Internal Company Document (July 22, 2021), CEL-UCC-00041050, at 10.

⁶⁰⁶ Mashinsky, Alex, re: All approved DeFi platforms, Email (December 29, 2021), CEL_EXAM-00054158, at 2.

⁶⁰⁷ van Etten, Frank, re: DeFi Allocations, Internal Company Document, Email (January 3, 2022), CEL_EXAM-00059872, at 9.

⁶⁰⁸ van Windergen, Gerrit, re: DeFi Allocations, Internal Company Document, Email (January 3, 2022), CEL_EXAM-00059872, at 8.

⁶⁰⁹ Sunada-Wong, Rodney, re: DeFi Allocations, Internal Company Document, Email (January 6, 2022), CEL_EXAM-00059872, at 3.

working on optimizing allocations further.”⁶¹⁰ He explained that this mean that in the future, deployment decisions “would be based on return expectations, cost of fund and risk limits” But “[f]or now, let’s get this last one out the door . . . and have a ‘lessons learned’ conversation next week.”⁶¹¹ After securing approval, Mr. van Etten emailed Mr. Mashinsky with the message, “Mission accomplished: all of our ETH will be deployed.”⁶¹² As discussed below, in early May 2022, the Terra stablecoin collapsed. Celsius was able to unwind its entire Terra position (\$990 million) but suffered a \$30 million loss in doing so.⁶¹³

Fourth, Celsius grew its mining business, which it launched in October 2020. Mr. Mashinsky saw mining as a way to increase yield.⁶¹⁴ Mr. Mashinsky explained to the Examiner that he thought mining, which was initially proposed by Mr. Holert, was “a good idea given the high returns and it was a very important element of diversifying the yield.”⁶¹⁵ Mr. Strauss described mining as a major shift in how Celsius deployed its assets.⁶¹⁶

⁶¹⁰ van Etten, Frank, re: DeFi Allocations, Internal Company Document, Email (January 6, 2022), CEL_EXAM-00059872.

⁶¹¹ *Id.*

⁶¹² van Etten, Frank, re DeFi Allocations, Internal Company Document, Email (January 7, 2022), CEL_EXAM-00054542, at 2.

⁶¹³ UCC, Discussion _ NewCo Plan_10-27-22_Examiner Version, at 5.

⁶¹⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁶¹⁵ *Id.*

⁶¹⁶ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

Multiple employees noted that at least in the case of Celsius's mining operations, certain members of senior management tried to and effectively did cut the Risk Team out of the decision-making process.⁶¹⁷ Mr. Holert stated that the Risk Team's primary issue was the extent to which Celsius funded Celsius Mining.⁶¹⁸ Celsius was giving Amir Ayalon, then Chief Executive Officer of Celsius Mining, "whatever he wanted" such as cash "to buy rigs or host agreements or make other loans in the mining space."⁶¹⁹ Mr. Holert was directed by Mr. Ayalon not to share information concerning mining with Celsius's Risk Team,⁶²⁰ a direction which Mr. Holert attributed to Mr. Ayalon not "want[ing] anyone to object to what he wanted to do. [Mr. Ayalon] always wanted to override the Risk Team and alienate them and keep them out of the process."⁶²¹ When asked if Mr. Ayalon's efforts to silo Risk from Celsius Mining were successful, Mr. Holert responded, "Yes."⁶²² Mr. Holert further explained that Mr. Mashinsky and Mr. Cohen-Pavon were aware of and supported these efforts and that Mr. Mashinsky directly approved various mining decisions for Mr. Ayalon.⁶²³

Mr. Strauss echoed Mr. Holert's view. While Mr. Strauss described Celsius's general efforts at risk management "as well intentioned and trying to

⁶¹⁷ *Id.*

⁶¹⁸ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶¹⁹ *Id.*

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ *Id.*

do things the right way” (if not always effective), he also said he “had an unfavorable view with respect to the mining business where the attitude and approach [were] the polar opposite.”⁶²⁴ Mr. Strauss cited “multiple decisions” concerning mining from which the Risk Team was excluded or in which Risk became involved so late in the process that it “didn’t have time to investigate” or in which important information “was purposefully being withheld.”⁶²⁵ When the Risk Team sought to assist, such as by suggesting a BTC mining hedge in June 2021, the recommendation was not acted on and the opportunity was lost.⁶²⁶ In May 2022, then Chief Operating Officer Aslihan Denizkurdu expressed a similar sentiment, telling then Chief Financial Officer Rod Bolger that she thought mining’s management “hides and gets away with things.”⁶²⁷

V. Celsius’s Systems And Personnel Deficiencies.

Celsius’s losses forced a growing recognition that Celsius lacked sufficient—and in some cases any—systems and personnel to manage a complex and growing business. Mr. Mashinsky claimed that “our CFOs up to that point weren’t up to par, that was a weak area in the company.”⁶²⁸ But Mr. Mashinsky and others in leadership frequently made significant decisions on an ad hoc

⁶²⁴ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶²⁵ *Id.*

⁶²⁶ Celsius, Postmortem Analysis, PowerPoint Presentation (February 11, 2022), CEL-UCC-00073959, at 7-11.

⁶²⁷ Celsius, Slack (May 21, 2022), CEL-UCC-00193286, at 5.

⁶²⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

basis, without any formal procedures, controls, or sufficient financial data to inform decisions.⁶²⁹ By early 2021, a growing coin deficit (or what Celsius referred to as a “mismatch” between assets and liabilities) prompted an effort to “professionalize” Celsius’s processes, hiring a new wave of personnel from traditional finance who formed additional committees and formalized policies and financial reporting to improve decision-making regarding deployment, reward rates, and risk.⁶³⁰ These measures did not cure Celsius’s fundamental shortcomings.

A. Celsius Lacked A Sufficient Risk Management Function.

Despite long touting its approach to risk, Celsius lacked any real substance in risk management until early 2021. Mr. Holert, initially hired as a consultant in February 2020, quickly observed that Celsius had not been “doing much” on credit risk.⁶³¹ Ms. Harrell explained that before Celsius hired a “proper Risk Team,” the trading team managed decisions about risk.⁶³² But, according to Mr. Holert, the trading team “didn’t have a research background or a credit

⁶²⁹ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022); Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022); Examiner Interview of Kai Tang (Vice President of Controllershship – Celsius, December 23, 2022).

⁶³⁰ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022); Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁶³¹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶³² Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022).

background to make these kinds of decisions.”⁶³³ While they conducted analysis on an ad hoc basis, the approach to risk “wasn’t systematic or apparent” and lacked a “framework.”⁶³⁴

Mr. Holert attempted to fill this gap by developing a credit rating system for institutional lending based on counterparty liquidity and leverage.⁶³⁵ Mr. Holert then created a template in Instilend—a database Celsius used to track and aggregate its loan positions—so that he could upload a PDF of credit limits and collateral requirements for loans to particular counterparties.⁶³⁶ The lending and trading desks could then consult the PDF, although Mr. Holert was not aware of a strict requirement to adhere to these limits and he frequently received requests to revisit limits in light of market growth.⁶³⁷

As of December 2020, exposure exceeded credit limits for several loans.⁶³⁸ For example:⁶³⁹

- Celsius’s loans to Alameda Research were twice its credit limit;

⁶³³ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶³⁴ *Id.*

⁶³⁵ *Id.*

⁶³⁶ *Id.* Mr. Holert said that Instilend also showed the assets, on a coin-by-coin basis, that Celsius had available to extend to borrowers given liquidity assumptions. However, the Examiner has not been provided with any Instilend data despite multiple requests for historical financial information.

⁶³⁷ *Id.*

⁶³⁸ *Id.*; Celsius, Risk Committee – Meeting #1, PowerPoint Presentation (December 11, 2020), CEL-UCC-00040827, at 2.

⁶³⁹ *Id.*

- Celsius's loans to Tether were twice its credit limit;⁶⁴⁰
- Celsius's loans to 3AC were three times its credit limit;
- Celsius's loans to Amber Technologies, Dunamis Trading, Kenetic Trading, and Profluent Trading were all more than their stated credit limits.

When asked by the Examiner, Mr. Holert and others were unable to explain why Celsius did not enforce the credit limits.⁶⁴¹

Mr. Holert also recommended that Celsius develop written policies and procedures to govern risk management, which he offered to draft.⁶⁴² But Mr. Leon directed Mr. Holert to stand down and said someone else would draft the policy. But nothing was drafted until preparation for the Financial Conduct Authority ("FCA") registration in the United Kingdom at the end of 2020 caused Celsius senior management to revisit that decision.⁶⁴³ As of the end of 2020, Celsius still had no formal risk policy or process in place. By that time, the business model had substantially shifted from the core of institutional lending

⁶⁴⁰ The Tether exposure eventually grew to over \$2 billion—a number so large that in late September 2021 that exposure was described to the Risk Committee as "present[ing] an 'existential risk' to Celsius" because "Celsius's capital is insufficient to survive a Tether default." Celsius, Tether Risk Appetite and Risk Reduction, PowerPoint Presentation (April 21, 2022), CEL-UCC-00298337, at 6-7.

⁶⁴¹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023); Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶⁴² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶⁴³ *Id.*

to other non-lending opportunities that Celsius viewed as offering “better” ways to generate revenue but that also created new risks.⁶⁴⁴

Celsius’s continued growth, in addition to UK regulatory requirements,⁶⁴⁵ prompted the December 2020 creation of Celsius’s Risk Committee, which had the stated purpose of “evaluating opportunities and assessing risks.”⁶⁴⁶ On paper, the Risk Committee was intended to be the “formal venue for approving initiatives and limits” related to market, credit, liquidity, and operational risks.⁶⁴⁷ Meeting agendas later characterized the Risk Committee as responsible for helping to reinforce “‘First Line’ ownership of risk-reward decisions.”⁶⁴⁸

From its inception in late 2020, members of the Risk Committee expressed concern about procedures for risk management.⁶⁴⁹ One of Celsius’s founders,

⁶⁴⁴ *Id.*; Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-00042583.

⁶⁴⁵ Meeting minutes indicate that UK regulators would “require Celsius to have a risk committee.” Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-00042583.

⁶⁴⁶ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023); Celsius, Risk Committee – Meeting #1, PowerPoint Presentation (December 11, 2020), CEL-UCC-00040827, at 2. Members of the Risk Committee initially included Mr. Mashinsky (Chief Executive Officer), Mr. Daniel Leon (President & Chief Operating Officer), Mr. Cohen-Pavon (Chief Revenue Officer), Ms. Urata-Thompson (Chief Financial Officer & Chief Investment Officer), and Mr. Patrick Holert (Financial Risk Officer). *Id.* Additional Celsius executives joined the Risk Committee at its second meeting in January 2021: Jeremie Beaudry (Head of Compliance), Shiran Kleiderman (CSO), Trushnedda Ramos (VP People). *Id.*; Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-00042583.

⁶⁴⁷ Celsius Network Risk Policies & Procedures (Pending Approval of Risk Committee), Internal Company Document (April 10, 2021), CEL-UCC-00034224, at 6-7.

⁶⁴⁸ Celsius, Risk Committee Meeting, PowerPoint Presentation (April 5, 2021), CEL-UCC-00034262, at 6.

⁶⁴⁹ Risk Committee notes indicate that risk management was a focus of the early meetings in December 2020 and January 2021. Celsius, Risk Committee Meeting Notes, Internal Company Document (January 8, 2021), CEL-UCC-42590; Celsius, Risk

Mr. Leon, commented on the “need for better processes, signing things, approving things, [and] putting a foundation in place.”⁶⁵⁰ In January 2021, Committee members expressed a “need to more effectively monitor risks on an ongoing basis” and “to expand our capabilities to manage financial risks.”⁶⁵¹ And Mr. Mashinsky commented that Celsius’s Risk Team—in effect, Mr. Holert—was “understaffed and needs to better know our counterparties.”⁶⁵²

To address that gap, in the spring and summer 2021, Celsius hired a team of employees with substantial experience at traditional financial institutions, who began developing more robust frameworks to manage risk. Rodney Sunada-Wong, who previously worked at Morgan Stanley and Merrill Lynch, began as Chief Risk Officer in March 2021.⁶⁵³ Mr. Sunada-Wong brought in a new Risk Team, each of whom had lengthy resumes consisting of experience in the traditional finance industry: Brian Strauss for Credit Risk; Stevan Maglic for Liquidity Risk; and Tat Chan for Market/Operational Risk.⁶⁵⁴ Mr. Maglic (Head of Liquidity Risk and Analytics Infrastructure) noted that he and the other new

Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-42583.

⁶⁵⁰ Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-42583.

⁶⁵¹ Celsius, Risk Committee Meeting Notes, Internal Company Document (January 8, 2021), CEL-UCC-42590.

⁶⁵² *Id.*

⁶⁵³ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁶⁵⁴ *Id.*; Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022); Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

hires collectively had decades of experience managing risk at large traditional financial institutions but that they lacked familiarity with “this new world of crypto.”⁶⁵⁵ Mr. Holert was responsible for hiring the employees who formed Celsius’s new Risk Management team.⁶⁵⁶ After their arrival, Mr. Holert was promptly shifted from his prior risk responsibilities to Celsius’s new mining efforts.⁶⁵⁷

Mr. Sunada-Wong understood that new Risk personnel had been hired as a result of “very significant losses.”⁶⁵⁸ He added: “They realized they needed to split out what was the responsibility of one person into different people and have people with subject matter expertise put in place the right processes.”⁶⁵⁹ Mr. Maglic speculated that Celsius’s senior management hired this new Risk Team because they recognized that they needed “to beef up risk management infrastructure” for Celsius to transition from a “startup” to a “modern and sophisticated financial institution” capable of “go[ing] public.”⁶⁶⁰

⁶⁵⁵ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁶⁵⁶ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶⁵⁷ *Id.*

⁶⁵⁸ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁶⁵⁹ *Id.*

⁶⁶⁰ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

Almost immediately, the new Risk Team identified issues in several key areas within Celsius's existing risk function.⁶⁶¹ According to Mr. Strauss, the risk ratings assigned to counterparties tended to be "extremely generous."⁶⁶² For example, Celsius had rated counterparties as investment grade that Mr. Strauss considered to be less than investment grade.⁶⁶³ In addition, fully secured loans were mistakenly perceived as "riskless."⁶⁶⁴ Finally, Mr. Strauss considered the previously conducted risk analyses to be "quite light," and he believed certain types of exposures were not evaluated at all.⁶⁶⁵

For instance, Celsius did not place limits on collateral it provided to lenders, because it did not recognize the risk that a lender might not return that collateral (as occurred with Equities First).⁶⁶⁶ The new Risk Team eventually re-underwrote the entire portfolio.⁶⁶⁷ When Mr. Maglic joined Celsius, he had the impression that information about risk was not "robust" or "quantitatively managed," nor was it "shared transparently and immediately across the firm on a daily basis."⁶⁶⁸ Mr. Mashinsky told the Examiner that Celsius changed its

⁶⁶¹ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶⁶² *Id.*

⁶⁶³ *Id.*

⁶⁶⁴ *Id.*

⁶⁶⁵ *Id.*

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

procedures at this point to include a “better tracking mechanism” for collateral.⁶⁶⁹

Soon after the arrival of the new Risk Team, Celsius began to develop formal policies to govern Celsius’s approach to risk. In April 2021, the Risk Team proposed that Celsius adopt a Celsius Financial Risk Policies and Procedures manual.⁶⁷⁰ The proposed manual outlined the overall approach to risk across all of Celsius’s businesses, focusing on liquidity risk, credit risk, and market risk.⁶⁷¹ The Examiner did not identify any evidence that Celsius ever adopted this policy, and in June 2021, the Risk Team sought approval of a new, much shorter document entitled the “Risk Management Framework.”⁶⁷² That framework, which was eventually approved in October 2021, outlined the role of the Risk Management Department, including its work with the Risk Committee and risk levels associated with specific deployments.⁶⁷³ Market Risk and Credit Risk

⁶⁶⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁶⁷⁰ Celsius Network Risk Policies & Procedures (Pending Approval of Risk Committee), Internal Company Document (April 10, 2021), CEL-UCC-00034224.

⁶⁷¹ *Id.*

⁶⁷² Celsius Network Risk Management Framework, Internal Company Document (October 20, 2021), CEL-UCC-00015962. The October 2021 Risk Management Framework shared the same introduction, statement of the mission and objectives, and “risk level” chart as Celsius’s risk organization as the April 2021 Risk Policies & Procedures. The April policy described several Celsius committees and provided lengthy descriptions of several risk-management tactics and risk-generating activities (including diversifying risk, cross-currency risk, credit on loan to borrows, fully collateralized loans, staking, DeFi, centralized exchanges, Funds, equipment financing and leasing, and mining activities), but the October policy defined only the Risk Committee and described only diversifying risk, omitting all other activities included in the previous April policy.

⁶⁷³ *Id.*

policies also were introduced in June 2021.⁶⁷⁴ The Examiner could not determine precisely when the Market Risk and Credit Risk policies were approved.⁶⁷⁵

Mr. Strauss described this effort as building on the existing framework established by Mr. Holert, while acknowledging that the prior framework had proved insufficient.⁶⁷⁶ Mr. Sunada-Wong described the policies as “stop-gap measures,” intended just to move the ball forward until the Risk Management team could develop more robust policies in 2022.⁶⁷⁷ And Celsius had no “robust,

⁶⁷⁴ Celsius, Market Risk Policy, Internal Company Document (June 1, 2021), CEL-UCC-00075085; Celsius Network Credit Risk Policy, Internal Company Document (June 9, 2021), CEL-UCC-00075044; Celsius, Minutes of Celsius Risk Committee Meeting, Internal Company Document (June 25, 2021), CEL-UCC-00042428, at 3 (documenting request for approval of market and credit risk policies); Celsius, Market Risk Policy, Internal Company Document (June 1, 2021), CEL-UCC-00075085 (an updated version of the Market policy was approved on June 1, 2022); Celsius, Risk Committee Meeting (Part I), PowerPoint Presentation (August 19, 2021), CEL-UCC-00041121, at 31 (requesting approval for Risk Management Framework, Credit Risk Policy, and Market Risk Policy).

⁶⁷⁵ The approval history contained within the Market Risk Policy “Version 0.5” indicates that the policy was both approved by the Risk Committee and became effective on June 9, 2021. Celsius, Market Risk Policy, Internal Company Document (June 1, 2021), CEL-UCC-00075085, at 7. However, documents from August 2021 suggest that the Market Risk policy was not yet approved. Celsius, Risk Committee Meeting (Part I), PowerPoint Presentation (August 19, 2021), CEL-UCC-00041121, at 31 (requesting approval of Risk Management Framework, Credit Risk Policy, and Market Risk Policy).

⁶⁷⁶ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶⁷⁷ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023). The Operational Risk Policy was introduced for approval during a Risk Committee Meeting on March 17, 2022. Celsius, Minutes of Celsius Risk Committee Meeting, Internal Company Document (March 17, 2022), CEL-UCC-00042051, at 1; Celsius, Risk Committee Meeting Part A, PowerPoint Presentation (March 17, 2022), CEL-UCC-00042056. According to later Risk Committee meeting minutes, the Operational Risk Policy was eventually approved on April 14, 2022. Celsius, Minutes of Celsius Risk Committee Meeting, Internal Company Document (April 14, 2022), CEL-UCC-00042184, at 1.

independent audit function” to ensure that processes and controls were being followed correctly, a key component of what Mr. Strauss considered an effective risk management program.⁶⁷⁸

While Celsius developed procedures to assess risk at the intake level (the “first line” of defense) and to monitor business intake by Risk Management function (the “second line” of defense), it did not develop an internal audit function to make sure those systems were working properly (the “third line” of defense).⁶⁷⁹ The October 2021 Celsius Risk Policies and Procedures referenced only two levels of review—a “first line of review,” where “financial risks are assessed by the CIO [Chief Investment Officer] organization” in connection with the New Business Committee, and a “second line of review . . . provided by the Risk Department” in connection with the Risk Committee.⁶⁸⁰

A proposal to form an internal audit department—with a mandate to “review[] processes of business groups for compliance with policies and

⁶⁷⁸ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶⁷⁹ Celsius Network Risk Policies & Procedures (Pending Approval of Risk Committee), Internal Company Document (April 10, 2021), CEL-UCC-00055874, at 22–23; Bruce, Steve, Internal Audit: Three Lines Of Defence Model Explained, ICAS (November 6, 2017), <https://www.icas.com/professional-resources/audit-and-assurance/internal-audit/internal-audit-three-lines-of-defence-model-explained> (last visited January 29, 2023). Financial institutions typically maintain three lines of defense to protect against risky investments. The first line of defense is deciding whether to make the investment and screening out unacceptable proposals. The second line of defense is creating risk management and various other control functions, which administer a risk framework to protect the company. A third line consists of a “robust, independent audit function” to ensure that processes and controls are being followed correctly. Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶⁸⁰ Celsius Network Risk Policies & Procedures (Pending Approval of Risk Committee), Internal Company Document (April 10, 2021), CEL-UCC-00055874.

procedures”—surfaced early on in Risk Committee meetings.⁶⁸¹ Mr. Leon, for one, commented on the “need for internal auditing” at the Committee’s second meeting in January 2021,⁶⁸² and these conversations continued throughout Spring 2021, with the Risk Committee identifying as a “priority” the creation of an Internal Audit department “to conduct audits of all departments and functions.”⁶⁸³

A recruiting effort culminated in the August 2021 hiring of Adrian Alisie to serve as the “Head of Internal Audit.”⁶⁸⁴ Mr. Alisie recalled learning during his interview process that his first three-to-six months at Celsius would involve serving in a consulting role, which would eventually evolve into a formal audit function.⁶⁸⁵ But, according to Mr. Alisie, he “never operated as the head of audits,” and no other Celsius personnel held a formal audit role.⁶⁸⁶ Instead, Mr. Alisie stated that the initial three-to-six month period “got extended,” and although he proposed a plan to launch the audit function, the executive team delayed the process.⁶⁸⁷ In March 2022, Mr. Alisie was still “soliciting input from

⁶⁸¹ Celsius, Risk Committee – Meeting #1, PowerPoint Presentation (December 11, 2020), CEL-UCC-00040827.

⁶⁸² Celsius, Meeting Notes, Internal Company Document (January 8, 2021), CEL-UCC-00042590.

⁶⁸³ Celsius, Risk Committee Meeting, PowerPoint Presentation (April 5, 2021), CEL-UCC-00034262.

⁶⁸⁴ Examiner Interview of Adrian Alisie (Global Head of Business Processes/Controls Optimization – Celsius, October 31, 2022).

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.*

⁶⁸⁷ *Id.*

the senior leadership team” on formation of the internal audit team.⁶⁸⁸ Mr. Strauss believed a decision was made that “internal audit could come later.”⁶⁸⁹

B. Celsius Was Unable To Track Its Financial Position Or Evaluate Profitability.

Ongoing financial losses also exposed significant and ongoing shortfalls in Celsius’s ability to monitor necessary financial information to inform decisions on deployment and risk. Celsius initially maintained summary indicators, updated on a weekly basis, in a spreadsheet known as the “AUM master spreadsheet.”⁶⁹⁰ Instilend also evolved to include coin-by-coin data.⁶⁹¹

Senior leadership expressed concerns about the limitations of these metrics. The December 2020 Risk Committee meeting prompted discussions of a new “dashboard” to better identify where Celsius had deployed its assets and to measure risk.⁶⁹²

⁶⁸⁸ Celsius, Minutes of Celsius Risk Committee Meeting, Internal Company Document (March 3, 2022), CEL-UCC-00041969; Celsius, Risk Committee Meeting Part B, PowerPoint Presentation (March 17, 2022), CEL-UCC-42095, at 13 (listing action item assigned to Mr. Alisie to “establish the internal audit function” with target date of April 15, 2022).

⁶⁸⁹ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

⁶⁹⁰ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶⁹¹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶⁹² Mashinsky, Alex, Risk Committee Meeting Notes, Email (February 14, 2021), CEL_EXAM-00057319; Celsius, Risk Committee Meeting Notes, Internal Company Document (December 11, 2020), CEL-UCC-00042583.

As of February 9, 2021, little progress on that project had been made, prompting Mr. Mashinsky to complain, “**We are 3 years old and we still don’t have any way to reconcile what we owe our customers vs. what our borrowers owe us.**”⁶⁹³

Mr. Mashinsky told the Examiner he was not concerned about Celsius’s lack of ability to reconcile assets and liabilities, because according to him, “everything is on the blockchain, that is the best way to track . . . on each blockchain.”⁶⁹⁴ But the blockchain did not track Celsius’s internal accounting processes and Celsius’s obligations to customers and counterparties. For example, when Celsius updated its user accounts every week with their weekly rewards, no actual movement of crypto assets occurred and therefore there was no transaction recorded on the blockchain.⁶⁹⁵ Instead, Celsius recorded the change in the customer’s balance on its book and records.⁶⁹⁶

The lack of accurate financial reconciliations had consequences for Celsius’s bottom line. In early March 2021, Mr. Mashinsky wrote to Ms. Urata-Thompson and Mr. Holert about what Mr. Mashinsky characterized as a “failure

⁶⁹³ Mashinsky, Alex, Risk Committee Meeting Notes, Email (February 14, 2021), CEL_EXAM-00057355 (emphasis in the original). Mr. Holert speculated that this was due, in part, to personnel turn over. Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, January 3, 2023).

⁶⁹⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Office – Celsius, January 5, 2023).

⁶⁹⁵ Examiner interview of Juwon Layiwola (Director – Celsius) and Adeel Ahmed (Middle Office – Celsius) (October 24, 2022).

⁶⁹⁶ *Id.*

in accounting and risk.”⁶⁹⁷ Celsius had been using BTC and ETH to purchase CEL for rewards as BTC and ETH prices rose, but did not replenish the BTC or ETH. Mr. Mashinsky calculated at the time that it would cost \$164 million to purchase BTC at higher prices.⁶⁹⁸ Mr. Mashinsky blamed his team for failing to conduct sufficient reconciliations and risk assessments on BTC and ETH shortfalls (in his words, a “complete breakdown”).⁶⁹⁹ He criticized them for measuring “all your numbers in dollars” even though Celsius was “a crypto denominated company.”⁷⁰⁰

Roni Cohen-Pavon Chief Revenue Officer and Head of Strategy, similarly recalled the 2021 discovery of the shortfall in BTC and ETH, which was caused by Celsius’s use of customer-deposited BTC and ETH to purchase CEL for rewards while BTC prices “shot through the moon.”⁷⁰¹ Mr. Sunada-Wong was also aware that Celsius had lost millions of dollars because it could not track its net position in BTC.⁷⁰² One Celsius internal document memorialized the view that Celsius continued to rely on “**Absolutely pathetic systems of record** – We do not do a good job of knowing anything about how our assets are actually

⁶⁹⁷ Mashinsky, Alex, What we earn vs what we spend – failure in accounting and risk mgm., Email (March 7, 2021), CEL_EXAM-00167647.

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

⁷⁰¹ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022).

⁷⁰² Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

performing. Our systems of record are horrible, and cause the team to operate in a manner . . . [that] can cause us to take on excessive risk.”⁷⁰³

After learning of the BTC shortfall, a Celsius “Task Force” consisting of Mr. Tappen (Coin Deployment Specialist), Mr. Nolan (Head of Institutional Lending and Head of Coin Deployment), Gabe Ficht (Senior Manager of Analytics), and others, worked to develop a better way to track Celsius’s coins and obligations to customers.⁷⁰⁴ The Task Force’s effort culminated in the “Freeze Report,” a Google spreadsheet intended to provide a snapshot of Celsius’s assets and liabilities at a given time.⁷⁰⁵ Mr. Tappen explained that Celsius built the Freeze Report internally because no product was available from third parties.⁷⁰⁶ Mr. Sunada-Wong called building the Freeze Report a “SWAT effort,” because Celsius did not have a good handle on its net position in BTC and the corresponding risk,⁷⁰⁷ while Mr. Cohen-Pavon characterized it as an attempt to help Celsius make “more educated” financial decisions.⁷⁰⁸ On the other hand, Seshu Vavilikolanu, Vice President of Data, said that the Freeze Report was

⁷⁰³ Celsius, Internal Company Document, CEL_EXAM-00088466 (March 5, 2021) (emphasis in original).

⁷⁰⁴ Examiner Interview of Connor Nolan (Head of Coin Deployment and Institutional Lending – Celsius, January 12, 2023).

⁷⁰⁵ *Id.*; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

⁷⁰⁶ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

⁷⁰⁷ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁷⁰⁸ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

developed in response to ad hoc requests, with the resulting product functioning as one band-aid on top of another.⁷⁰⁹

The Freeze Report became functional in May 2021. Celsius initially produced it weekly, then three days a week, and by July 2022, almost daily.⁷¹⁰ In general, the Freeze Report provided the quantity and price of each crypto asset with values calculated on the respective date, and then fed them into a balance sheet calculation.⁷¹¹ To populate the Freeze Report, data was pulled from various sources utilizing automatic API connections, but it also required significant manual checks and signoffs to verify that the information was correct.⁷¹²

Mr. Mashinsky said that the Freeze Report was “supposed to represent [the] truth at that moment.”⁷¹³ Although he stated that he did “not often” review the Freeze Reports, Mr. Mashinsky also said that the reports informed his “understanding of where the company is,” including “all assets and liabilities” and “where all the coins are.”⁷¹⁴ Similar to Mr. Tappen, Mr. Mashinsky added that no “off-the-shelf software” existed to manage the information reflected in the

⁷⁰⁹ Examiner Interview of Seshu Vavilikolanu (Vice President of Data – Celsius, January 6, 2023).

⁷¹⁰ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

⁷¹¹ *Id.*

⁷¹² *Id.*

⁷¹³ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁷¹⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

Freeze Report and that given that Celsius was “trailblazing,” the system that it ultimately used “was the best system the team came up with.”⁷¹⁵

At the same time, Mr. Mashinsky acknowledged “issues” with the Freeze Report’s ability to track information accurately and completely, noting that because they only provided snapshots of Celsius’s financials approximately twice per week, Celsius “[didn’t] know 100% what’s going on between those times.”⁷¹⁶ But Mr. Mashinsky said that functions such as reconciling the balance sheet with the Freeze Report “are not [his] strengths,” so he relied on the “excellent people” on relevant teams “to build the systems and the processes” that ultimately informed his decision-making.⁷¹⁷

The Freeze Report was a work-in-progress throughout 2021 and into 2022. On the one hand, in recognition of the Freeze Report’s limitations, Celsius wanted to develop an entirely new platform; a single data lake (a centralized depository for data) to replace the Freeze Report that it could query as needed.⁷¹⁸ Mr. Vavilikolanu was hired in part to help develop a centralized platform that could aggregate data for analytical purposes (rather than relying on ad hoc data sources) and a dashboard to provide convenient access to that information.⁷¹⁹ Because Celsius believed a new platform was required, Mr. Vavilikolanu recalled

⁷¹⁵ *Id.*

⁷¹⁶ *Id.*

⁷¹⁷ *Id.*

⁷¹⁸ Examiner Interview of Seshu Vavilikolanu (Vice President of Data – Celsius, January 6, 2023).

⁷¹⁹ *Id.*

that his team was not supposed to touch the Freeze Report and instead was to focus on building out that new platform.⁷²⁰ At the same time, Celsius did not allocate sufficient resources to accomplish this objective for almost a year, leaving Celsius's managers reliant on the Freeze Report, with all its limitations, through mid-2022.⁷²¹

As of September 2021, for example, the Finance team had requested additional "critical" updates to the Freeze Report, and Celsius worked to "stabilize the process" and "ensure[] it capture[d] all strategies."⁷²² Yet Celsius did not promptly implement these internal requests, leaving the Freeze Report with "deficiencies," including "missing coins," for months.⁷²³ In response to the Examiner's inquiry, Mr. Sunada-Wong agreed that there were gaps in the technical infrastructure necessary for Celsius to make sound financial decisions and manage risk.⁷²⁴ And Mr. Vavilikolanu explained that the original creators of the Freeze Report, including Mr. Ficht, had repeatedly underscored that "the Freeze [Report] was not meant to be a balance sheet" but rather was merely "a band-aid" that should be "treat[ed] as such."⁷²⁵ But as described in Part Two,

⁷²⁰ *Id.*

⁷²¹ *Id.*

⁷²² Celsius, ALCO, PowerPoint Presentation (September 22, 2021), CEL-UCC-00149084, at 4; Celsius, ALCO Minutes, Internal Company Document (September 8, 2021), CEL-UCC-00042988, at 4.

⁷²³ Celsius, Freeze Improvements, Email (January 30, 2022), CEL-UCC-00072781.

⁷²⁴ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁷²⁵ Examiner Interview of Seshu Vavilikolanu (Vice President of Data – Celsius, January 6, 2023).

Section V.E. below, Celsius personnel grew reliant on the Freeze Report in ways it was not intended to serve. And ultimately, limitations in the Freeze Report and reconciliation process hamstrung the financial team's ability to understand Celsius's coin positions and execute strategies, in turn causing further losses.

On top of the limitations of the Freeze Report, Celsius also did not collect granular data about the effectiveness of its deployment strategies and relied instead on aggregate numbers. After his arrival, Mr. Sunada-Wong advocated within Celsius that an aggregate view of the firm's activities was insufficient; in comparison, breaking financial results into different sub-business lines would provide necessary data to evaluate profitability and enhance risk management.⁷²⁶ Kai Tang (Vice President of Controllershship and Financial Planning and Analysis and the Former Head of Valuations and Analysis for Deployment)—a July 2021 hire in the financial department—similarly told the Examiner that, prior to his arrival, Celsius had prepared reports reflecting the revenue generated by each overall investment strategy, such as DeFi, CeFi, or staking.⁷²⁷ But these reports did not reflect data at the sub-strategy level; that is, mapping the different ways to generate yield within Celsius's DeFi, CeFi, or staking strategies.⁷²⁸ As a result, Celsius's decision makers lacked information on that more granular level.

⁷²⁶ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁷²⁷ Examiner Interview of Kai Tang (Vice President of Controllershship – Celsius, December 23, 2022).

⁷²⁸ *Id.*

In July 2021, Mr. Tang began building profit and loss reports to provide this more granular data for Celsius's strategies.⁷²⁹ Mr. Tang sourced his profit and loss data from the Freeze Report, which he used to understand where Celsius had deployed its crypto assets.⁷³⁰ But there was no central resource to understand why Celsius had made the investment decisions it did, and so Mr. Tang had to track down individual traders to understand the strategies (a process he previously referred to as "an inquisition").⁷³¹ The profit and loss reports were transmitted to the accounting department and then to the Assets and Liabilities Committee for discussion.⁷³² When Rod Bolger arrived in February 2022 as the new Chief Financial Officer, he promptly updated the profit and loss reports, which he viewed as insufficient.⁷³³

After learning of the existence of the profit and loss reports from Mr. Tang, the Examiner requested their production. Despite Mr. Tang's statement that he began building these reports in the summer of 2021, Celsius could only locate and produce profit and loss reports starting on January 1, 2022.

Another new report—known as the "Waterfall"—was introduced in May 2021 (although no reports from that time period exist) to track Celsius's liquidity

⁷²⁹ *Id.*

⁷³⁰ *Id.*

⁷³¹ *Id.* An example of a Weekly P&L File is provided at Appendix 24.

⁷³² *Id.*

⁷³³ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

and deployment activities.⁷³⁴ The Waterfall Report presented important metrics such as the NIM, which (as discussed above) compared the yield that Celsius generated by deploying a certain crypto asset against the reward rates that it paid to customers in the Earn program (or interest on loans) for those assets. The Waterfall Report reflected the NIM on a coin-by-coin basis, thereby allowing Celsius to identify those crypto assets for which it was unable to generate yield sufficient to pay rewards.⁷³⁵ Mr. Cohen-Pavon explained that the Waterfall provided a weekly breakdown between revenue-generating activities, such as spot lending, institutional loans, retail loans, external asset managers, DeFi, staking, and mining.⁷³⁶ For each line in the Waterfall Report, Celsius aggregated the weighted average of the cost of coins deployed in the strategy as compared to the yield of the strategy.⁷³⁷ The difference of the two showed the NIM.⁷³⁸ When asked, Mr. Mashinsky said that he was unfamiliar with the term “Waterfall Report.”⁷³⁹

⁷³⁴ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022).

⁷³⁵ Appendix 23, Pivot Data Worksheet from May 27, 2022 Waterfall Report.

⁷³⁶ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022).

⁷³⁷ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

⁷³⁸ *Id.*

⁷³⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

As with the Freeze Report, Celsius employees expressed concerns regarding the Waterfall Report, referring to the NIM calculation as “broken,”⁷⁴⁰ giving a number that “can’t be real”⁷⁴¹ and was “fake.”⁷⁴² Mr. Tappen explained that the NIM reflected in the Waterfall Report compared the yield on Celsius’s deployed assets to the cost of those assets, rather than to the cost of the liabilities (*i.e.*, did not take into account interest paid on undeployed coins).⁷⁴³ In addition, the NIM did not take into account the “[a]sset-liability mismatch”—*i.e.*, it did not reflect the “extra expenses” Celsius incurred in borrowing stablecoin to purchase coins to meet the shortfall in coins owed to customers and so undervalued the true cost of Celsius’s stablecoin holdings.⁷⁴⁴ Mr. Tappen understood that Mr. Sabo was responsible for the NIM calculation that was adopted.⁷⁴⁵ In addition, the data for the Waterfall Report was sourced from the Freeze Report, and therefore subject to the same limitations as the Freeze Report.⁷⁴⁶

⁷⁴⁰ Tappen, Dean, Slack (May 6, 2022), CEL-UCC-00092123.

⁷⁴¹ Perman, Jason, Slack (March, 3, 2022), CEL_EXAM-00171573.

⁷⁴² Perman, Jason, Slack, CEL-UCC-00209673, at 1.

⁷⁴³ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

⁷⁴⁴ Celsius, Slack (May 6, 2022), CEL_EXAM-00177109; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

⁷⁴⁵ *Id.*

⁷⁴⁶ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

Personnel in Treasury, such as Mr. Perman and Mr. Tappen, believed that the Waterfall overstated Celsius's true NIM and advocated for change.⁷⁴⁷ In January 2022, Paul Lang, Former Portfolio Manager, agreed that the figures were misleading because "the NIM is 3x worse (-0.3% to -0.9%)" when based on the cost of liabilities.⁷⁴⁸ Mr. Tappen later expressed frustration with the methodology because "were [sic] gonna get positive and everyone gonna get happy while we drive further negative."⁷⁴⁹ And in mid-March 2022, Assets and Liabilities Committee Meeting materials noted that the NIM approach being advocated by Treasury "add[ed] a huge negative impact when compared to our current NIM calculation."⁷⁵⁰ Celsius never modified its Waterfall NIM calculation.

C. Celsius Lacked A Liquidity Risk Framework.

When Mr. Maglic arrived at Celsius in June 2021, "there was no robust liquidity framework" and "no firmwide understanding of what our liquidity was on a coin level and . . . at top of house."⁷⁵¹ He prioritized developing a framework for measuring Celsius's liquidity and then expanded the infrastructure to encompass risks related to other areas such as market, credit, and economic

⁷⁴⁷ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

⁷⁴⁸ Celsius, re using liabilities in the NIM framework, Email (January 21, 2022), CEL_EXAM-00057774.

⁷⁴⁹ Celsius, Slack (February 28, 2022), CEL_EXAM-00172489.

⁷⁵⁰ Celsius, Asset-Liability Committee Meeting, Internal Company Document, (March 16, 2022), CEL-UCC-00042775.

⁷⁵¹ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

capital.⁷⁵² The Liquidity Reserve/Modeled Liquidity Outflow (“MLO”) report, first created during the summer of 2021, offered the missing insight into Celsius’s liquidity.

The MLO is described in Celsius’s Liquidity Risk Policy as “a set of models, rules, and business logic designed to determine liquidity under a given scenario,”⁷⁵³ with the underlying report intended “to ensure that the Firm maintain[ed] enough liquidity at all times to withstand a severe stress event.”⁷⁵⁴ As Mr. Perman explained, managing Celsius’s liquidity meant both: (1) “managing swap liquidity,” *i.e.*, “do we have enough coins to manage our day-to-day needs under non-stress scenarios”; and (2) managing “contingent liquidity risk,” *i.e.*, “how much do we need under some modeled stress scenario.”⁷⁵⁵

Neither Mr. Perman nor Mr. Maglic⁷⁵⁶ knew how Celsius had modeled liquidity risk prior to their arrival or whether anyone was responsible for assessing risk generally. Mr. Perman said that when he joined Celsius, he did not ask for any documentation of how Celsius approached stress-testing because he “knew that it didn’t exist.”⁷⁵⁷ Consistent with these statements, Mr. Cohen-

⁷⁵² *Id.*

⁷⁵³ Celsius, Liquidity Risk Policy, Internal Company Document, CEL-UCC-00075064, at 2.

⁷⁵⁴ Celsius, Asset & Liabilities Committee, PowerPoint Presentation (December 1, 2021), CEL-UCC-00042901.

⁷⁵⁵ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

⁷⁵⁶ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁷⁵⁷ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

Pavon said that before the Risk Committee was formed, Celsius “didn’t have any liquidity analysis.”⁷⁵⁸

By August 19, 2021, the MLO report had “moved into beta production.”⁷⁵⁹ The first MLO report that Celsius produced to the Examiner was dated September 17, 2021.⁷⁶⁰ Celsius created MLO reports on a near-daily basis thereafter.

Mr. Mashinsky himself did not always have a clear understanding of Celsius’s liquidity and relied on “summaries” provided to him at various committee meetings. When asked how Celsius ensured it had sufficient assets to meet customer demands, Mr. Mashinsky said that there was “a team dedicated to that,” noting, “they told me they had sufficient liquidity,” though he sometimes “heard from customers about withdrawals being frozen.”⁷⁶¹

Measuring Celsius’s liquidity under the newly created process consisted of four steps. The first step was “to define the scenarios under which liquidity will be measured.”⁷⁶² Celsius chose the following stress scenario as the base upon

⁷⁵⁸ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022)

⁷⁵⁹ Celsius, Risk Committee Meeting (Part I), PowerPoint Presentation (August 19, 2021), CEL-UCC-00041121.

⁷⁶⁰ Celsius, LR/MLO Reporting – General Market Stress Scenario, Excel Spreadsheet (September 17, 2021), CEL_EXAM-00160010; Celsius, LR/MLO Reporting – General Market Stress Scenario, Excel Spreadsheet (September 17, 2021), CEL_EXAM-00160011.

⁷⁶¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁷⁶² Celsius, Liquidity Risk Policy, Internal Company Document, CEL-UCC-00075064, at 4.

which the MLO was built: a 50% price decline in its coins over a 7-day period and/or a 40% price decline in a 1-day period.⁷⁶³ In addition, Celsius’s model assumed that under such a price drop Celsius would experience withdrawal requests for 20% of the customers’ crypto assets for each crypto asset and also modeled what margin calls Celsius would receive.⁷⁶⁴ Mr. Maglic stated this scenario was chosen based upon “the worst price [drop] in BTC or ETH” that up until that time had occurred in one day and over one week and used that metric for all coins.⁷⁶⁵

At the second step, the MLO “determines the number of coins that are depleted” under this scenario.⁷⁶⁶ At the third step, Celsius determines how long it would take to access the coins necessary to pay out the number of coins required under the stress scenario.⁷⁶⁷ Under the MLO, “[a]ll coins are classified in Liquidity Tier buckets based on the time it takes . . . for the coins to be readily available.”⁷⁶⁸ Celsius created the following liquidity tiers:⁷⁶⁹

⁷⁶³ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 11, 2022), CEL-UCC-00042860, at 4.

⁷⁶⁴ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁷⁶⁵ *Id.*

⁷⁶⁶ Celsius, Liquidity Risk Policy, Internal Company Document, CEL-UCC-00075064, at 4.

⁷⁶⁷ *Id.*

⁷⁶⁸ *Id.* at 2.

⁷⁶⁹ Celsius, LR / MLO Reporting – General Market Stress Scenario, Internal Company Document (May 02, 2022), CEL-UCC-00005218.

Liquidity Tier	Liquidation Period
1	Instant
2	Up to 24 hours
3	Up to 3 days
4	Up to 7 days
5	Up to 30 days
6	Greater than 30 days, or undetermined recovery

As the final step, Celsius's policy stated that key stakeholders review the MLO report daily and individuals from various business units, including Treasury and Risk, discuss any liquidity and coin deficit issues.⁷⁷⁰ The MLO report was also reviewed on a coin-by-coin basis, to ensure that the ratio of Celsius's liquidity reserve to its modeled outflow remained greater than one.⁷⁷¹ In other words, company policy was that Celsius had to maintain access to each type of crypto asset supported on its platform such that it could access that token and move it off Celsius's platform (for example, due to customer withdrawals) within seven days of Celsius's stress test model being triggered.⁷⁷² If the ratio dipped below one for any coin, then Celsius was not permitted to make any deployments of that crypto asset and was required to "do something about it"⁷⁷³ such as using another type of crypto asset for which there was sufficient liquidity to obtain more of the crypto asset for which there was not.⁷⁷⁴

⁷⁷⁰ Celsius, Liquidity Risk Policy, Internal Company Document, CEL-UCC-00075064, at 5.

⁷⁷¹ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁷⁷² *Id.*

⁷⁷³ *Id.*

⁷⁷⁴ *Id.*; Celsius, Liquidity Risk Policy, Internal Company Document, CEL-UCC-00075064, at 2, 5.

Mr. Perman described the process in similar terms, noting that if liquidity flows went negative, the Treasury Department would direct the Deployment team to "unwind certain strategies and move to a more liquid tier," emphasizing that apart from unwinding positions, "there was no other solution."⁷⁷⁵ (See Appendix 14 for an example of the LR/MLO report.)

Mr. Mashinsky told the Examiner that Celsius "made sure they had enough liquidity in different accounts" but he was "not sure where it was tracked."⁷⁷⁶ He believed Celsius always had sufficient liquidity to meet customer demand and said he was assured by the Risk and Finance teams that there was sufficient liquidity.⁷⁷⁷ He also said, however, that "sometimes there were windows over the weekends where we didn't have enough and they would have to move coins, that would pause withdrawals."⁷⁷⁸ Mr. Mashinsky said that he did not look at liquidity tiers on a weekly basis, and that Finance and Risk managed the needed liquidity in each tier. He added that Finance and Risk infrequently came to him with problems.⁷⁷⁹

In analyzing Celsius's liquidity and financial condition, Celsius management rarely differentiated among different Celsius legal entities, instead evaluating its financial condition, liquidity needs, and risk on a consolidated

⁷⁷⁵ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

⁷⁷⁶ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁷⁷⁷ *Id.*

⁷⁷⁸ *Id.*

⁷⁷⁹ *Id.*

basis. For example, Celsius's Waterfall Report tracked Celsius's liquidity and deployment activities, and included all of Celsius's assets by factoring in Celsius's investments, Celsius Mining, Custody, and DeFi, among others.⁷⁸⁰

D. Celsius Formed New Committees And Adopted Formal Policies To Bring More Oversight And Structure To Its Business.

Mr. Sunada-Wong recalled that, when he joined in March 2021, Celsius had no formal treasurer and the Assets and Liabilities Committee did not yet exist. Instead, the New Business Committee made decisions about deployments frequently on the same day that they were proposed.⁷⁸¹ Mr. Sunada-Wong explained that others in Celsius agreed with him that this was "not the way to do it."⁷⁸² By April or May 2021, he recommended hiring a treasurer and worked with others in senior leadership to develop an Assets and Liabilities Committee, where "business lines would be responsible for presenting a proposal" and providing materials in advance.⁷⁸³

⁷⁸⁰ Celsius, Waterfall Report, Internal Company Document (June 10, 2022), CEL-UCC-00071757.

⁷⁸¹ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023). According to Celsius's policy approved in June 2021, no assets could be deployed to new business activities without the New Business Committee's approval, although the New Business Committee was dissolved shortly after that policy was memorialized. Celsius, Celsius Network Risk Policies & Procedures (Pending Approval of Risk Committee), Internal Company Document (April 10, 2021), CEL-UCC-00034224, at 6; Celsius, Celsius Network Market Risk Policy, Internal Company Document (June 9, 2021), CEL-UCC-00015931, at 9 (indicating that coins could not be deployed to investment funds or mining activities without the New Business Committee's approval).

⁷⁸² Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁷⁸³ *Id.*

In June 2021, at the tail-end of the crypto asset bull market, Celsius replaced the New Business Committee with a newly-formed Assets and Liabilities Committee.⁷⁸⁴ The Assets and Liabilities Committee was charged with, among other things, approving Celsius's investment proposals,⁷⁸⁵ including "allocation of funds, for deployment and in general;" "reward rate adjustments;" "CEL treasury strategy;" and "changes in credit facilities usage."⁷⁸⁶ According to Mr. Cohen-Pavon, "everything" flowed into the Assets and Liabilities Committee, which had a wider perspective on cost of funding, yield, and other needs.⁷⁸⁷

The Portfolio Committee (sometimes referred to as the "Portfolio Review Committee"),⁷⁸⁸ formed around the same time as the Assets and Liabilities Committee,⁷⁸⁹ was responsible for reviewing matters related to Celsius's investment portfolio.⁷⁹⁰ These matters included: (1) the status of yield in major

⁷⁸⁴ The members of the Assets and Liabilities Committee included the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Chief Risk Officer, the Chief Revenue Officer, the Chief Investment Officer, and the Head of Research. Sikora, John, Letter to Stacy Bogert Re: *In the Matter of Certain Digital Asset Lending Platforms*, HO-14301, Letter (November 3, 2021), CEL-UCC-00023024.

⁷⁸⁵ Celsius, Asset & Liability Committee Chart, Internal Company Document, CEL-UCC-00023560.

⁷⁸⁶ *Id.* (describing ALCO's responsibility for making decisions about, among other things, "allocation of funds, for deployment and in general").

⁷⁸⁷ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

⁷⁸⁸ Celsius, Celsius Network Risk Management Framework, Internal Company Document (October 20, 2021), CEL-UCC-00015962, at 5.

⁷⁸⁹ According to Celsius's counsel, the first Portfolio Committee meeting and ALCO meeting were held on July 12, 2021 and July 14, 2021, respectively. Sikora, John, Letter to Stacy Bogert Re: *In the Matter of Certain Digital Asset Lending Platforms*, HO-14301, Letter (November 3, 2021), CEL-UCC-00023024, at 4 n.4.

⁷⁹⁰ Nolan, Connor, Weekly Portfolio Review – Institutional Lending Update 05/13/22, Email (May 14, 2022), CEL-UCC-00014560. The Portfolio Committee met weekly and was comprised of four voting members (the Chief Financial Officer, Chief Investment

coins; (2) “out of the ordinary” deployment events; (3) income projections for the coming week; (4) general deployment status and needs; and (5) an overview of changes in the market that may affect future deployment results.⁷⁹¹ The Portfolio Committee also approved new deployment strategies, new platforms, and any changes (“rebalancing” or “new allocations”) to Celsius’s investment portfolio.⁷⁹² Finally, the Portfolio Committee was responsible for recommending to the Assets and Liabilities Committee any changes to reward rates.⁷⁹³

Officer, Chief Risk Officer, and Chief Revenue Officer) and a moderator (the Head of Research), with others attending as presenters or observers. Celsius, Weekly Portfolio Review Chart, Internal Company Document, CEL-UCC-00023580; Silva, Ryan, Weekly Portfolio Review – January 3rd 2022 Cliff Notes, Email (January 4, 2022), CEL-UCC-00078206 (circulating summary of “Weekly Portfolio Review”); Celsius, Weekly Portfolio Review – January 3rd, 2022 – Cliff Notes, Internal Company Document (January 3, 2022), CEL-UCC-00078207.

⁷⁹¹ Celsius, Weekly Portfolio Review Chart, Internal Company Document, CEL-UCC-00023580; Sabo, Ron, Fwd: Tether’s Chinese CP exposure, Email (October 24, 2021), CEL_EXAM-00060295 (R. Sabo requesting data on effect of increase in Tether loan to report at next Portfolio Committee meeting); Celsius, Weekly Portfolio Review, PowerPoint (January 3, 2022), CEL-UCC-00078210; Celsius, Weekly Portfolio Review, PowerPoint (March 21 2022), CEL_EXAM-00054710; Celsius, Weekly Portfolio Review, PowerPoint (April 25, 2022), CEL-UCC-00147039; Celsius, Weekly Portfolio Review, PowerPoint (May 2, 2022), CEL-UCC-00147040; Celsius, Weekly Portfolio Review, PowerPoint (May 9, 2022), CEL-UCC-00147041; Celsius, Weekly Portfolio Review, PowerPoint (May 16, 2022), CEL-UCC-00144903; Celsius, Weekly Portfolio Review, PowerPoint (May 23, 2022), CEL-UCC-00147042; Celsius, Weekly Portfolio Review, PowerPoint (May 31, 2022), CEL-UCC-00147043; Celsius, Weekly Portfolio Review, PowerPoint (June 6, 2022), CEL-UCC-00147044.

⁷⁹² Weekly Portfolio Review Chart, Internal Company Document, CEL-UCC-00023580.

⁷⁹³ Sabo, Ron, MATIC – reward rate reduction, Email (October 11, 2021), CEL_EXAM-00053853 (email from R. Sabo requesting ALCO approval of Portfolio Committee’s recommendation to reduce reward rate on MATIC); Sabo, Ron, Reward rate updates, Email (December 14, 2021), CEL_EXAM-00057165 (email from R. Sabo asking for input on PC’s proposal to reduce reward rates on BTC, ETC, and stablecoins); Celsius, Reward Rate Determination Policy, Version #1.0, Internal Company Document, CEL-UCC-00023583 (identifying the policy’s “primary audience” as participants in the weekly Portfolio Committee “that is responsible for making any reward rate changes”); Celsius, Weekly Portfolio Review Chart, Internal Company Document, CEL-UCC-00023580; Celsius, Asset & Liability Committee Chart, Internal Company Document, CEL-UCC-

While Mr. Mashinsky—who described himself as “a delegator”—was a member and generally invited to the meetings of Celsius committees, he told the Examiner that he attended “some” but “not all” such meetings and that he looked at “some minutes but not all.”⁷⁹⁴ Mr. Sunada-Wong commented that Mr. Mashinsky “did not like hearing” about “new committees.”⁷⁹⁵ When asked about his involvement in the committees’ decision-making processes, Mr. Mashinsky said that he “got involved when [he] thought something was important” but that there was “no process” governing his involvement.⁷⁹⁶

In or before 2021, Celsius also formed a Coin Listing Committee to review and assess crypto assets as possible additions to the platform.⁷⁹⁷ The Coin Listing Committee met every other week and was chaired by Celsius’s Head of

00023560 (including line item, “Review Portfolio Committee’s recommendations regarding reward rate adjustments”).

⁷⁹⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁷⁹⁵ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁷⁹⁶ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁷⁹⁷ Sikora, John, Letter to S. Bogert *Re: In the Matter of Certain Digital Asset Lending Platforms, HO-14301*, Letter (August 23, 2021), CEL-UCC-00022923. Members as of 2022 included Mr. Sabo, Mr. Sunada-Wong, Mr. Cohen-Pavon, Mr. Van Etten, Shiran Kleiderman, Mr. Blonstein, Mr. Noy, Mr. Chan, Mr. Maglic, and Mr. Perman, among others. Sunada-Wong, Rodney, Re: Updated invitation: Coin Listing Committee @ Tue May 3, 2022 1:15pm - 2pm (EDT) (rodney.sunada-wong@celsius.network), Email (May 9, 2022), CEL-UCC-00112891; Celsius Network Risk Management Framework, Internal Company Document (October 20, 2021), CEL-UCC-00015962 (noting that as of the “writing of this policy” on June 9, 2021, various committees existed, including the Coin Listing Committee); Gould, Annalee, Re: Celsius, GK8 & Horizen, Email (April 29, 2022), CEL-UCC-00119770; Sunada-Wong, Rodney, Re: Updated invitation: Coin Listing Committee @ Tue May 3, 2022 1:15pm - 2pm (EDT) (rodney.sunada-wong@celsius.network), Email (May 9, 2022), CEL-UCC-00074362; Dreifuss, Itai, Exco decision, Email (June 2, 2022), CEL-UCC-00117529.

Research, Ron Sabo.⁷⁹⁸ One well-known problem that Celsius employees routinely mentioned was the listing (and potential deployment) of assets that did not yield any revenue or profit for the company.⁷⁹⁹ In June 2021, Yaron Shalem, then Chief Financial Officer, consulted with Mr. Tappen and Mr. Nolan and told Mr. Sabo that if Celsius did not have a way to deploy an asset, it should lower the reward rate for the given asset.⁸⁰⁰ Mr. Sabo initially questioned the decision, suggesting that Celsius look at the larger market and competitor rates before altering the current reward rate.⁸⁰¹

In early 2022, members of the Coin Listing Committee discussed the prospect of listing new coins, reward rates Celsius should offer for the new coins, and potential deployment strategies for the new coins.⁸⁰² In a January 2022 email thread, Mr. Sabo proposed listing AVAX, the native token on the Avalanche blockchain, explaining that, while Fireblocks did not support staking AVAX, Celsius also would use DeFi protocols and institutional loans to generate yield.⁸⁰³

⁷⁹⁸ Sikora, John, Letter to S. Bogert *Re: In the Matter of Certain Digital Asset Lending Platforms, HO-14301*, Letter (August 23, 2021), CEL-UCC-00022923; Celsius, Slack (January 25, 2022), CEL-UCC-00073459.

⁷⁹⁹ Celsius, Internal Company Document, CEL_EXAM-00088466 (“We have a bunch of listed assets that we build liabilities in but have NO WAY OF EARNING REVENUE. If the asset costs us money to list, we should delist it.”).

⁸⁰⁰ Sabo, Ron, Re: FW: Slide Deck for tomorrow, Email (June 14, 2021), CEL_EXAM-00107084.

⁸⁰¹ *Id.*

⁸⁰² Perman, Jason, Re: AVAX initial reward rate – request for approval, Email (January 18, 2022), CEL_EXAM-00059934.

⁸⁰³ *Id.*; Homepage, Avalanche, <https://www.avax.network/> (last visited January 29, 2023) (“Avalanche is an open, programmable smart contracts platform for decentralized applications.”).

Mr. Perman and Mr. Tappen both argued that Celsius should not “blindly set[] rates” for coins for which Celsius’s potential deployment strategies may not generate the reward rates Celsius offers to users.⁸⁰⁴ Mr. Tappen added that, in some cases, Celsius had not been able to deploy some new tokens months after first listing them on its app, which meant that Celsius could not break even on the asset for over a year.⁸⁰⁵

Months later, however, Mr. Mashinsky still sought to list more coins without approved deployment strategies to produce positive yield. In May 2022, Mr. Mashinsky provided his “wish list” to the Coin Listing Committee for an additional 40 coins to be listed to the platform.⁸⁰⁶ On June 10, two days before the Pause, Mr. Mashinsky still sought to add additional crypto assets to the Earn program. Mr. Bolger pushed back:

I haven’t seen a business case for any of this. The new coins bring in what in terms of revenue and cost what in terms of ongoing operations and tech development? My understanding is that the last 5 coins brought in very little in balances. I’m not a fan of prioritizing this over other product enhancements in the pipeline that will bring in revenue that we have in our projections.⁸⁰⁷

⁸⁰⁴ Perman, Jason, Re: AVAX initial reward rate – request for approval, Email (January 18, 2022), CEL_EXAM-00059934.

⁸⁰⁵ *Id.*

⁸⁰⁶ Sunada-Wong, Rodney, Email re Updated invitation: Coin Listing Committee @ Tue May 3, 2022 1:15pm – 2pm (EDT) (Rodney.sunada-wong@celsius.network), Email (May 10, 2022), CEL-UCC-00074369.

⁸⁰⁷ Bolger, Rod, re Next coin listing – request for input, Email (June 10, 2022), CEL-UCC-00026669.

E. Ongoing Losses Illustrated Continuing Problems.

Celsius's deficient systems and record-keeping impeded its ability to address its losses. Celsius learned this lesson at the start of 2022, as four straight months of negative NIM were compounded by hundreds of millions of dollars in losses from poorly executed strategies, communication failures, limited systems of record, and disregard of policies.

These losses took several forms. At the end of 2021, Celsius suffered losses of \$150 million on exchange trading strategies, due at least in part to its cash and carry trade strategy.⁸⁰⁸ A cash and carry trade is an arbitrage trading strategy that exploits mispricing between an underlying asset and its corresponding derivative.⁸⁰⁹ Under its strategy, Celsius would take a long position in an asset while simultaneously selling an associated derivative (shorting a futures contract) in hopes that Celsius could profit when prices of both converge.⁸¹⁰ The strategy ultimately proved unsuccessful. Mr. Maglic said, "the consensus in Risk was that [the] team wasn't sophisticated enough and we didn't have the technology to execute quickly, get in and out of positions quickly."⁸¹¹

⁸⁰⁸ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁸⁰⁹ Cash and Carry, Investopedia (April 5, 2022), [https://www.investopedia.com/Service_Agreement_dated_December_31,_2020,_Case_No._22-1139_\[Dkt._24-5\].terms/c/cashandcarry.asp](https://www.investopedia.com/Service_Agreement_dated_December_31,_2020,_Case_No._22-1139_[Dkt._24-5].terms/c/cashandcarry.asp) (last visited January 29, 2023).

⁸¹⁰ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁸¹¹ *Id.*

In January 2022, Celsius experienced trading losses due to BTC price fluctuations as BTC prices dropped and confronted challenges in implementing hedging strategies.⁸¹² The negative NIM Celsius had experienced over the preceding months, along with the trading desk's losses, prompted multiple internal reviews in early February 2022. The Risk Team conducted a "second-line, post-mortem review," in part to assess Celsius's FTX losses and in part to protect the team against Mr. Mashinsky's criticisms related to Celsius's negative NIM.⁸¹³ Mr. Alisie's team separately conducted an "independent 'third-line of defense' assessment via a 'targeted audit' review."⁸¹⁴ Mr. Alisie's team focused on mining, the CeFi trading desk, and the financial reconciliation process.⁸¹⁵

Although, as Mr. Alisie acknowledged, the "rigor" of these reviews was "not even close" to a proper audit, they nonetheless identified significant issues, ranging from lack of controls, poor communication, issues with data and analytics, and governance.⁸¹⁶ The Risk Team's postmortem identified similar issues, including that Celsius lacked sufficient controls, communication,

⁸¹² Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023); Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸¹³ Examiner Interview of Steven Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁸¹⁴ Celsius, Risk Committee Meeting (Part II), PowerPoint Presentation (February 3, 2022), CEL-UCC-00041855, at 3; Examiner Interview of Steven Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁸¹⁵ Examiner Interview of Adrian Alisie (Global Head of Controls/Business Optimization – Celsius, October 31, 2022); Examiner Interview of Kai Tang (Vice President of Controllershship – Celsius, December 23, 2022). In July 2022, Mr. Alisie also conducted a review of Celsius's security posture.

⁸¹⁶ Examiner Interview of Adrian Alisie (Global Head of Business Processes/Controls Optimization – Celsius, October 31, 2022).

governance, and infrastructure in critical areas including exchange traded strategies, mining, and strategic investments.⁸¹⁷ Mr. Mashinsky and others in senior leadership were briefed on the Risk Team's postmortem.⁸¹⁸ And although the Risk Committee discussed taking action to address the findings of the postmortem assessment, Mr. Maglic, a member of the Risk Committee and Risk Team, was unaware of any specific actions taken or any policies implemented to address the deficiencies identified by his review.⁸¹⁹

1. CeFi And Trading Desk.

In February 2022, Mr. Alisie's team undertook a CeFi review because Mr. Mashinsky had "circumvented some controls and processes under stressful market conditions," and then went "over the head" of Finance and Risk

⁸¹⁷ Examiner Interview of Steven Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022); Celsius, Postmortem Analysis, PowerPoint, (February 11, 2022), CEL-UCC-00073959, at 3.

⁸¹⁸ Celsius, Risk Committee Meeting (Part II), PowerPoint (February 17, 2022), CEL-UCC-00041929; Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸¹⁹ Minutes of Celsius Risk Committee Meeting, Internal Company Document (February 17, 2022), CEL-UCC-00042530, at 3; Minutes of Celsius Risk Committee Meeting, Internal Company Document (March 3, 2022), CEL-UCC-00041969, at 3; Risk Committee Meeting (Part II), Internal Company Document (March 3, 2022), CEL-UCC-00041996, at 5; Minutes of Celsius Risk Committee Meeting, Internal Company Document (March 17, 2022), CEL-UCC-00042051, at 2 (reporting status on progress of three postmortem areas); Risk Committee Meeting, Internal Company Document (March 17, 2022), CEL-UCC-00042056, at 5–6 (same); Minutes of Celsius Risk Committee Meeting, Internal Company Document (March 31, 2022), CEL-UCC-00042115, at 1–2; Celsius, Risk Committee Meeting Part A, Internal Company Document (March 31, 2022), CEL-UCC-00042119, at 6–9; Celsius, Risk Committee Meeting Part A, Internal Company Document (April 14, 2022), CEL-UCC-00042189, at 5–10; Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

leadership to direct trades inconsistent with Celsius's directionally-neutral strategy.⁸²⁰

After BTC prices had plunged 19% in December 2021 and continued to drop in early January 2022, the Risk Team observed that the trading desk had exceeded limits set for BTC exposure and as a result, faced "mounting losses."⁸²¹ Mr. van Etten pushed the trading desk to bring its position within the limits, but by the time he succeeded, prices had dropped from roughly \$47,500 at the beginning of January 2022 to under \$40,000, or another 16%.⁸²² Mr. Mashinsky responded by wresting control over the trading decisions and ordered the desk to shed its BTC position in light of the price drop.⁸²³

After Celsius had sold off so much BTC that it had entered into a net negative position, Mr. Sunada-Wong and others prevailed upon Mr. Mashinsky to return to a net neutral position.⁸²⁴ The below charts prepared by Celsius in connection with the Risk Team's postmortem⁸²⁵ illustrate the trades that Mr. Mashinsky directed:

⁸²⁰ Examiner Interview of Adrian Alisie (Global Head of Controls/Business Optimization – Celsius, October 31, 2022).

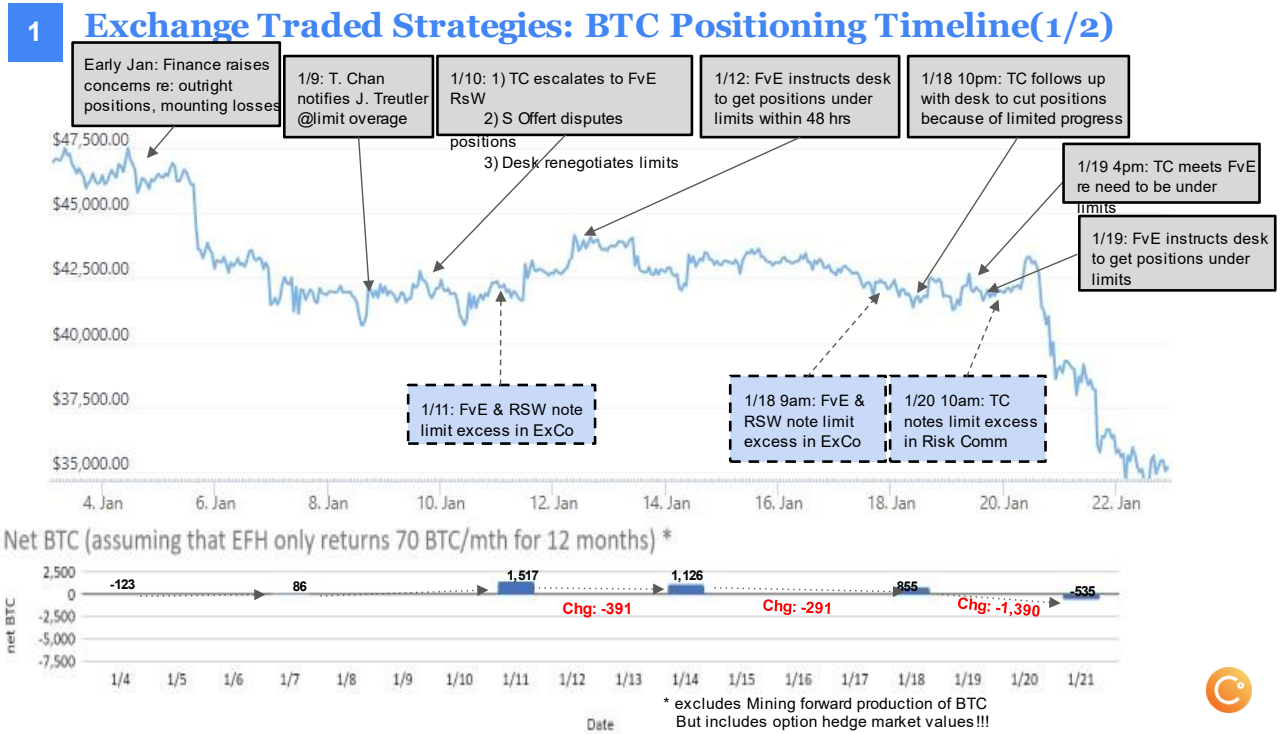
⁸²¹ Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999.

⁸²² *Id.*

⁸²³ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023); Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999; Lang, Paul, Slack (January 24, 2022), CEL_EXAM-00172343, at 3.

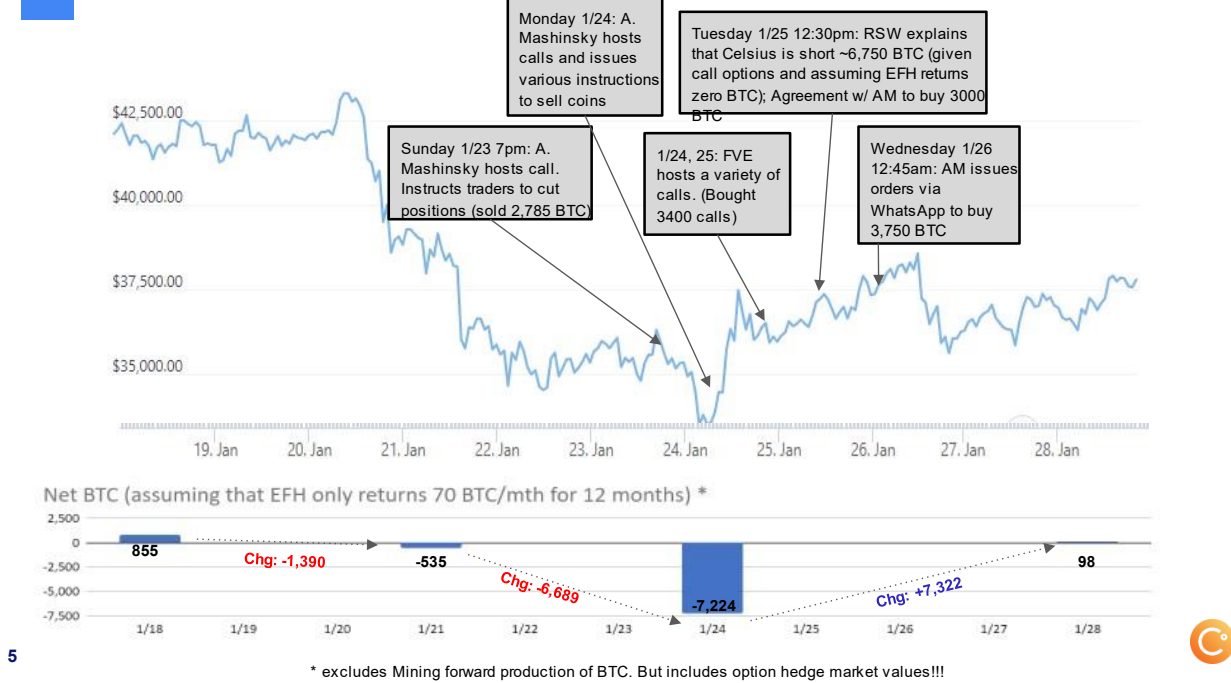
⁸²⁴ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸²⁵ Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999.



Note: This is the first of two slides, prepared by Celsius's Risk Team as part of its "postmortem," depicting the timeline of Celsius's BTC trades in January 2022. This slide illustrates Celsius's effort to cut positions in BTC, which exceeded limits.

1 Exchange Traded Strategies: BTC Positioning Timeline(2/2)



Note: This is the second of two slides, prepared by Celsius's Risk Team as part of its "postmortem," depicting the timeline of Celsius's BTC trades in January 2022. This slide illustrates the directional trading that took place at Mr. Mashinsky's direction.

The Risk Team's postmortem underscored that because "Celsius has a policy to not take directional positions on cryptocurrency prices," Mr. Mashinsky's actions were "inconsistent with policy."⁸²⁶ Mr. Sunada-Wong reiterated this point to the Examiner explaining that Celsius "had conveyed to the public that we take coins and lend them out."⁸²⁷ Accordingly, no more than "a minor percentage" of its revenue generating deployments should be positional "trading."⁸²⁸ Mr. Mashinsky, meanwhile, blamed the trading team for taking

⁸²⁶ *Id.*

⁸²⁷ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸²⁸ *Id.*

directional positions, while claiming that he had not.⁸²⁹ In contemporaneous emails, Mr. Sunada-Wong expressed skepticism about whether Mr. Mashinsky would “be receptive” to the assertion that “what Alex has instructed the team to do the past 8 days and . . . his continued requests for ‘trading around the hedges’” in fact constituted proprietary trading.⁸³⁰ Mr. Sunada-Wong told the Examiner that Mr. Mashinsky’s view was “mind-bending.”⁸³¹

Mr. Alisie’s review focused on the need to establish controls for Mr. Mashinsky’s involvement in Celsius’s approach to hedging and investments. Mr. Alisie’s notes from a meeting with Mr. Chan (Head of Operational Risk) and Mr. Maglic reflect “a sense senior management lacks being well versed in capital markets and understanding tradeoffs.”⁸³² Mr. Alisie noted Mr. Chan’s and Mr. Maglic’s concerns that “[a] lack of mandates left room for Alex to give instructions to trade around hedges,” and that “mandates that define strategies, owners, and roles and responsibilities should be implemented.”⁸³³ Mr. van Etten put it more bluntly: Mr. Mashinsky had “a tendency to micromanage things in areas where he has no expertise.”⁸³⁴ Celsius had a “need” to “set rigid limits, so

⁸²⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸³⁰ Sunada-Wong, Rodney, Re: NIM & Trade Execution Analysis, Email (Jan. 29, 2022), CEL_EXAM-00059693.

⁸³¹ Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸³² Alisie, Adrian, Targeted Review Investment and Hedging Strat - Meeting Notes, Internal Company Document (February 7, 2022), CEL_EXAM-00010363.

⁸³³ *Id.*

⁸³⁴ *Id.*

when [Mashinsky] attempts to give directions that are not in[]line with overall strategy, there is [a] document teams can point to, to push back and say this is not part of the overall strategy.”⁸³⁵

More broadly, Mr. Sabo noted that “there is no investment strategy document.”⁸³⁶ Mr. Tang likewise highlighted the “lack of clear structure” where “not everybody knows everything, which is a problem.”⁸³⁷ Mr. van Etten also raised concerns to Mr. Alisie “that management is not aware of all trading strategies,” and “investments [were] happening outside of [van Etten’s] knowledge.”⁸³⁸

But even beyond these operational gaps, Mr. van Etten reported that “many decisions [were] currently made while flying blind,” with “a lack of accurate data to allow to make sound strategic decisions.”⁸³⁹ As he put it to Mr. Alisie, the Freeze Report was “far from ideal,” and Mr. van Etten also raised concerns “around accuracy of portfolio waterfall data.”⁸⁴⁰ Mr. Lang likewise “expressed concerns that the position data as generated by the freeze process [wa]s hard to rely upon,” which made him “hesitan[t] to trust data” for making trades.⁸⁴¹ Mr. Maglic said that many members of the Risk Team felt concerned

⁸³⁵ *Id.*

⁸³⁶ *Id.*

⁸³⁷ *Id.*

⁸³⁸ *Id.*

⁸³⁹ *Id.*

⁸⁴⁰ *Id.*

⁸⁴¹ *Id.*

that there was not “enough understanding of what our liquidity situation was” at the level of senior leadership.⁸⁴²

The Risk Team’s postmortem analysis conducted in early 2022 echoed these shortcomings.⁸⁴³ As one example, the assessment described Celsius’s significant investment in the digital currency company Qredo and observed that because the investment was handled exclusively by Mr. Mashinsky and Mr. Pavon, “this exposure was virtually unknown within the organization.”⁸⁴⁴ The assessment also noted that Celsius’s “aggregated” approach to managing its investment positions was “currently impossible because of many data quality issues.”⁸⁴⁵ When Mr. Bolger arrived as the new Chief Financial Officer in February 2022, he found the CeFi desk “basically shut down” and in the process of building “from scratch” to position Celsius to invest again.⁸⁴⁶

2. Reconciliation Review.

The review of Celsius’s financial reconciliation process also uncovered serious process issues. As Mr. Alisie recalled, then-Chief Financial Officer Bolger “had concerns with the quality of the reconciliation process,” which was “key to

⁸⁴² Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

⁸⁴³ Celsius, Postmortem Analysis, PowerPoint (February 11, 2022), CEL_EXAM-00161999.

⁸⁴⁴ *Id.*

⁸⁴⁵ *Id.*

⁸⁴⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

ensuring the accuracy and completeness of Celsius's financial data.”⁸⁴⁷

Mr. Bolger told the Examiner that in controls, “reconciliations are your life blood: if things are not reconciled, that's where things go wrong.”⁸⁴⁸

Accordingly, Mr. Alisie's team reviewed reconciliations performed in January and February 2022 to (1) “assess sufficiency/completeness of the financial reconciliations performed by the accounting team to substantiate the account balances stated in the general ledger”; and (2) “test the design and operating effectiveness of these reconciliations.”⁸⁴⁹

Mr. Bolger's concerns proved justified. While the “bank account reconciliations” were “generally adequate,” “reconciliations and/or various account analysis performed for other line items” were “largely inadequate.”⁸⁵⁰ Of particular note, the account reconciliations for institutional loans receivables, collateral receivables, and collateral payables all drew from a single source of data, rather than multiple data sources and were compiled into a platform called Instilend.⁸⁵¹ Head of Institutional Lending Nolan described the platform as a

⁸⁴⁷ Examiner Interview of Adrian Alisie (Global Head of Business Processes/Controls Optimization – Celsius, October 31, 2022).

⁸⁴⁸ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

⁸⁴⁹ Celsius, Finance Targeted Review, PowerPoint (April 10, 2022), CEL_EXAM-00000707.

⁸⁵⁰ *Id.*

⁸⁵¹ Celsius, Finance Targeted Review, PowerPoint (April 10, 2021), CEL_UCC-00071976. “Instilend” is a platform built by the former company Instilend Technologies, Inc., which provided “electronic securities lending tools via fully automated on-line technology.” Instilend Technologies Inc, Bloomberg, <https://www.bloomberg.com/profile/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. company/ *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. 0609530D:US (last visited January 29, 2023). It appears that Instilend Technologies, Inc. was eventually

portal used by the institutional lending and operations team to track loans on a more automated basis. That is, Instilend was reconciled with the Freeze Report that was itself sourced from Instilend, as opposed to a “true reconciliation” using an independent source.⁸⁵² As to retail loans, the Finance team also could not “independently confirm” the accuracy of reported balances and relied solely on the data provided by the “back office” systems.⁸⁵³

More broadly, the Finance team reportedly could not independently verify any of the crypto holding balances that it received from API feeds or the user liabilities it received from the “Backoffice App” data.⁸⁵⁴ Similarly, Mr. Alisie found that “investment reconciliations” were “not always performed” and the balances reported “may not be accurate and complete.”⁸⁵⁵ Of 26 reported investments, totaling \$885 million, reconciliations to confirm accurate balance reporting could only be performed on three.⁸⁵⁶ In addition, there was no “central inventory”

acquired on May 2, 2013 by Investview, Inc., a New Jersey-based financial services organization that offers “licensed asset and portfolio management services” and “market infrastructure technologies.” Investview, Inc. Quarterly Report, Form 10-Q, U.S. Securities and Exchange Commission (November 14, 2014), [https://www.sec.gov/Service/Agreement dated December 31, 2020, Case No. 22-1139 \[Dkt. 24-5\]. Archives/edgar/data/862651/000114420414068660/v394218_10q.htm](https://www.sec.gov/Service/Agreement%20dated%20December%2031,%202020,%20Case%20No.%2022-1139%20[Dkt.%2024-5].Archives/edgar/data/862651/000114420414068660/v394218_10q.htm) (last visited January 29, 2023).

⁸⁵² Celsius, Finance Targeted Review, PowerPoint (April 10, 2022), CEL_EXAM-00000707.

⁸⁵³ *Id.* Backoffice refers to the name of the backend system for the Celsius platform. Chan, Tat, Re: important: Stablecoin depegging, Email (March 27, 2021), CEL-UCC-00072494.

⁸⁵⁴ Celsius, Finance Targeted Review, PowerPoint (April 10, 2022), CEL_EXAM-00000707.

⁸⁵⁵ *Id.*

⁸⁵⁶ *Id.*

of investments, potentially resulting in inaccurate counts of active deals and their balances, and statements were “not provided by some investment counterparties,” meaning that “current market value may only be obtained when [the] company’s current valuation is released publicly.”⁸⁵⁷ Finally, Mr. Alisie’s review determined that known “gaps” in Instilend, Backoffice, and the Freeze Report, including “evidence indicating that such data is inaccurate,” were “not always addressed and/or modified to manage data going forward.”⁸⁵⁸

None of these conclusions were surprising to Celsius personnel, who routinely criticized the Freeze Report and other financial reporting. For example, in February 2022, Mr. Alisie spoke to Mr. Tappen, Mr. Perman, and former Finance Manager Glenn Williams about the Freeze Report as part of Mr. Alisie’s review of the financial reconciliation process. During those meetings, Mr. Tappen, Mr. Perman, and Mr. Williams noted that senior management sometimes had to reverse strategic decisions based on Freeze Reports after realizing the Freeze Report data was inaccurate. Mr. Williams called the Google Sheets (on which the Freeze Reports were prepared) “an insufficient infrastructure to timely and accurately organize all relevant data,” and that the tab containing supposedly “live” data was “unreliable and contain[ed] many known errors.”⁸⁵⁹ Mr. Alisie’s notes state that the “current process [of creating the Freeze Report] does not give an accurate account of the firm[’s] capital

⁸⁵⁷ *Id.*

⁸⁵⁸ *Id.*

⁸⁵⁹ Alisie, Adrian, Tappen, Dean, Perman, Jason, 2.9.22 Freeze Process Discussion, Notes (February 9, 2022), CEL_EXAM-00000659.

positions” but rather is only a “best effort[] based on what we currently have and is better than nothing.”⁸⁶⁰

The Freeze Report presented a particular challenge for those at the trading desk who sought to use the data to execute trading strategies. Notes of a meeting between Mr. Alisie about investment and hedging strategies with Mr. Lang reflect concerns about hedging positions based on Freeze Report data, which Mr. Lang said was “hard to rely upon,” was “not in []line with expectations,” and “[didn’t] make sense.”⁸⁶¹ In private discussions, Celsius employees put it more bluntly, calling the entire Freeze Report process “messed up”⁸⁶² and “a joke.”⁸⁶³ When asked if the reconciliations were run off the Freeze Report, Mr. Mashinsky said, “I don’t know how that works.”⁸⁶⁴ Mr. Mashinsky told the Examiner that he “wasn’t worrying about the Freeze being accurate or if the balance sheet would reconcile.”⁸⁶⁵

⁸⁶⁰ *Id.*

⁸⁶¹ Alisie, Adrian, Targeted Review Investment and Hedging Strat - Meeting Notes, Internal Company Document (February 7, 2022), CEL_EXAM-00010363. Lang expressed similar sentiments in an email to the Risk Management team, noting that he “continue[d] to be uncomfortable trading” based on the Freeze Reports “given lack of data consistency.” Lang, Paul, BTC and ETH net position, Email (February 24, 2022), CEL_EXAM-00053802, at 1. Other employees shared his concerns. Sabo, Ron, Stake Matic in Freeze, Email (December 17, 2021), CEL_EXAM-00058674, at 1 (R. Sabo addressing “issue of staked Matic being double-counted in the freeze” and requiring “a manual correction”); Bai, Fan, LR Report under SEC stress, Email (April 7, 2022), CEL_EXAM-00056086, at 2 (email from F. Bai to S. Maglic and S. Shen flagging a possible “data issue” in the Freeze).

⁸⁶² Tappen, Dean, Slack (June 2, 2022), CEL-UCC-00092035.

⁸⁶³ Tang, Kai, Slack (May 16, 2022), CEL-UCC-00092041, at 2.

⁸⁶⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁶⁵ *Id.*

Perhaps the harshest assessment of the Freeze Report came from Celsius's Risk Team. In February 2022, members of the Risk Team discussed new deployment proposals.⁸⁶⁶ Mr. Sunada-Wong reminded the Risk Team that new strategies were not approved until the current Freeze Report was finalized.⁸⁶⁷ Tamas Antal (Head of Model Risk and Quantitative Analytics) in response, said:

from what I understand the main problem is not that people are not signing off on the freeze but that the freeze is taken way too seriously for what it is: it is one analyst's lonely guess of what the firm's positions are. It is a random spreadsheet that we (the firm) did not take seriously enough to assign proper resources.⁸⁶⁸

Mr. Chan agreed:

[t]he freeze is unfortunately one analyst's guess of the firm's position, and it ended up this way because proper resources and care have not been diverted to the vital organs of the firm. While we are neglecting our hearts & lungs (the Freeze), we continue to build up our biceps and triceps (DeFi trading, Exchange traded securities).⁸⁶⁹

Mr. Tappen observed in a February 7, 2022 email that until Celsius had a system "that produces accurate data, [Celsius] should not rely on the [F]reeze" for trading strategies. Mr. Tappen reiterated to the Examiner that he would not rely on the accuracy of the information in any one Freeze Report and instead review several Freeze Reports "holistically" to understand Celsius's general positions over time. Mr. Vavilikolanu agreed, calling the Freeze Report a "band-aid" that contained inconsistencies and should not be used for trades. Thus, even though

⁸⁶⁶ Chan, Tat, Re: DeFi projects to review, Email (February 26, 2022), CEL-UCC-00510934, at 1-2.

⁸⁶⁷ *Id.* at 1.

⁸⁶⁸ *Id.*

⁸⁶⁹ *Id.*

Celsius employees knew of the Freeze Report's limitations, Celsius relied on the Freeze Report for purposes that it was not intended to serve.

VI. Celsius's Public Representations.

At the same time Celsius was struggling to balance its growth with revenue generation and its lack of sufficient risk or oversight management, Celsius engaged in a robust advertising campaign that did not reflect these challenges. From inception, Celsius waged an aggressive public campaign to attract new customers to the Celsius platform and retain existing customers, and in many instances, to use existing customers as "ambassadors" to bring in new customers.⁸⁷⁰ Celsius repeatedly emphasized multiple themes in its campaign, which continued even up until it filed for bankruptcy, including the following:

(1) Celsius put its "community" of customers "first;"⁸⁷¹

(2) Celsius customers should join Celsius to gain "unparalleled access to reach financial freedom" from traditional banking.⁸⁷²

(3) The Celsius platform was secure and was "the safest place for your crypto;"⁸⁷³ and

⁸⁷⁰ @CelsiusNetwork, Twitter (September 24, 2021) ("Do you want to help bring the next 100 million people to crypto? Learn more about the #Celsius Ambassador program").

⁸⁷¹ Homepage, Celsius, <https://celsius.network/> (last visited January 29, 2023) (explaining that "1.7 million people call Celsius their home for crypto [b]ecause we put our community first[]"); CEL Token Explained, Celsius, <https://celsius.network/cel-token-explained> (last visited January 29, 2023) ("Celsius was built to put you – the community – first.").

⁸⁷² Celsius, Marketing Approach & Priorities, Presentation (February 2022), CEL_EXAM-00000513, at 8; Celsius, Your Home For Crypto, Medium (February 7, 2022), <https://celsiusnetwork.medium.com/celsius-your-home-for-crypto-8db3a7b7ccdf> (last visited January 29, 2023).

⁸⁷³ Celsius, Marketing Approach & Priorities, Presentation (February 2022), CEL_EXAM-00000513, at 8; Security Insights, Celsius, <https://celsius.network/security-insights> (last visited January 29, 2023).

(4) Celsius was transparent with its customers;⁸⁷⁴

However, Celsius's public representations were often inconsistent with the facts, often most starkly represented by Mr. Mashinsky regularly making misleading and inaccurate public statements, including in AMAs and tweets.

The AMAs, meaning "Ask Mashinsky Anything," as a spin on the traditional "Ask Me Anything," were live-streamed every Friday afternoon beginning in April 2020.⁸⁷⁵ According to the Celsius website, the AMAs provided Mr. Mashinsky with the opportunity to give "an update on [the] state of the business and the product, and answer questions from the community."⁸⁷⁶ Mr. Mashinsky told the Examiner that the purpose of the AMAs was to "talk to customers," provide transparency, and to hear feedback from customers directly and "unfiltered."⁸⁷⁷ Mr. Mashinsky told the Examiner, "I just went on a show for an hour once a week to tell people how I feel."⁸⁷⁸

⁸⁷⁴ Proof of Community, Celsius, <https://celsius.network/proof-of-community> (last visited January 29, 2023) ("At Celsius, transparency is a critical part of our mission.").

⁸⁷⁵ Celsius created videos referred to as "AMAs" prior to 2020 but the regular Friday schedule was not implemented until 2020. Celsius, Fireside Finance Friday with Alex Mashinsky, YouTube (April 3, 2020), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. *watch?v=ServiceAgreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. *OsXvAsYZmvA&list=ServiceAgreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. *PLLjzjU2vvKVMNgmFM2oV79WQ0iSqf_5oV&index=45* ("We'll be doing these every week, every Friday, same time, same location."). The AMAs can be found on Celsius's YouTube channel at <https://www.youtube.com/@CelsiusNetwork/streams>. The Celsius YouTube channel had 69,300 subscribers as of January 2023.

⁸⁷⁶ Celsius, Why trust Celsius, <https://celsius.network/why-trust-celsius> (last visited January 29, 2023).

⁸⁷⁷ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁷⁸ *Id.*

The specific topics discussed during the AMAs varied to some extent each week, but consistently included discussions about the Celsius business model and the Flywheel, the CEL token, reward rates, and new and anticipated Celsius products and services. Mr. Mashinsky also presented statistics, such as the number of customer registrations and first-time customers, the amount of various crypto asset types on the Celsius platform, and Celsius's liquidity.⁸⁷⁹ Mr. Mashinsky told the Examiner that an hour prior to each live AMA beginning, he met with Marketing, Legal, and Compliance to discuss the agenda for the upcoming AMA.⁸⁸⁰ Mr. Mashinsky recalled marking up the agenda and receiving input from Legal.⁸⁸¹ Other employees similarly recalled that before each AMA, an agenda of topics was circulated and a meeting occurred during which representatives from various departments discussed the topics.⁸⁸²

Mr. Mashinsky often invited guests to speak during the AMAs and provided livestream viewers the opportunity to ask questions. Guests included Celsius employees involved in product development and retail loans,⁸⁸³ and

⁸⁷⁹ Celsius, Celsius AMA September 3 2021, YouTube (September 3, 2021), <https://www.youtube.com/watch?v=kimbFp6Dz98>.

⁸⁸⁰ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁸¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁸² Examiner Interview of Oleena Mak (Senior Lifestyle and Communications Marketing Manager – Celsius, December 12, 2022); Examiner Interview of Brian Strauss (Former Chief Credit Officer] – Celsius, December 20, 2022).

⁸⁸³ Celsius, The Celsius Web App Demo! – Celsius AMA January 22 2021, YouTube (January 22, 2021), <https://www.youtube.com/watch?v=zIfTYHwhfc4>; Celsius, AMA November 5 2021, YouTube (November 5, 2021), <https://www.youtube.com/watch?v=t-4DzujwruI>; Celsius, Celsius AMA November 12 2021, YouTube (November 12, 2021),

crypto influencers such as Bitboy⁸⁸⁴ and Jeff Rose, a certified financial planner.⁸⁸⁵ Celsius executives and senior employees—such as Nuke Goldstein, Co-Founder and Chief Technology Officer,⁸⁸⁶ Tal Bentov, Vice President of Lending and Director of Lending Operations,⁸⁸⁷ Tushar Nadkarni, Chief Growth and Product Officer,⁸⁸⁸ Oren Blonstein, Head of Innovation and Chief Compliance

<https://www.youtube.com/watch?v=bTrByn1DAFo>; Celsius, Celsius AMA December 24 2021, YouTube (December 24, 2021), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=ServiceAgreement](https://www.youtube.com/watch?v=ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. WTRVwGiJFyE; Celsius, Celsius AMA December 17 2021, YouTube (December 17, 2021), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=vFE_gO1fdeE](https://www.youtube.com/watch?v=vFE_gO1fdeE); Celsius, Celsius AMA March 11 2022, YouTube (March 11, 2022), <https://www.youtube.com/watch?v=JCMuY2FbKJQ>; Celsius, Celsius AMA September 14 2021, YouTube (September 14, 2021), <https://www.youtube.com/watch?v=rs-VVjrXvMs>; Celsius, Celsius AMA October 1 2021, YouTube (October 1, 2021), <https://www.youtube.com/watch?v=mUokZbnfFyE>.

⁸⁸⁴ Celsius, Celsius AMA June 3 2022, YouTube (June 3, 2022), <https://www.youtube.com/watch?v=9zAVFmiyDhE> (Ben Armstrong is known as Bitboy in the crypto space. <https://bitboycrypto.com/>).

⁸⁸⁵ Celsius, Celsius AMA May 27 2022, YouTube (May 27, 2022), <https://www.youtube.com/watch?v=MFboVGyOX2I>. *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5].

⁸⁸⁶ Celsius, Celsius AMA April 1 2022, YouTube (April 1, 2022), <https://www.youtube.com/watch?v=ELjw52R6BzY>; Celsius, Celsius AMA December 3 2021, YouTube (December 3, 2021), <https://www.youtube.com/watch?v=IrRC8KDBSww>; Celsius, Celsius AMA December 17 2021, YouTube (December 17, 2021), <https://www.youtube.com/watch?v=iCYU5UVOea8>; Celsius, Celsius AMA October 22 2021, YouTube (October 22, 2021), <https://www.youtube.com/watch?v=YjESYyMa3bA>.

⁸⁸⁷ Celsius, Celsius AMA March 11 2022, YouTube (March 11, 2022), <https://www.youtube.com/watch?v=JCMuY2FbKJQ>; Celsius, Celsius AMA September 24 2021, YouTube (September 24, 2021), <https://www.youtube.com/watch?v=rs-VVjrXvMs>.

⁸⁸⁸ Celsius, Celsius AMA November 5 2021, YouTube (November 5, 2021), <https://www.youtube.com/watch?v=t-4DzujwruI>; Celsius, Celsius AMA November 12 2021, YouTube (November 12, 2021), <https://www.youtube.com/watch?v=bTrByn1DAFo>; Celsius, Celsius AMA December 24 2021, YouTube (December 24, 2021), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5].

Officer,⁸⁸⁹ and Connor Nolan, Head of Institutional Lending and Head of Coin Deployment⁸⁹⁰—joined AMAs when topics relevant to their roles were discussed.

During each AMA, Celsius posted a link on Twitter, through its @CelsiusNetwork Twitter account, directing followers to the livestream. Celsius encouraged Twitter followers to participate live, and to ask questions of Mr. Mashinsky, sometimes in exchange for promotional codes for increased rewards in their Earn accounts.⁸⁹¹ Mr. Mashinsky selected questions to answer live during the AMAs.⁸⁹² On average, according to Celsius employees, the AMAs were viewed by a thousand to several thousand audience members.⁸⁹³ Celsius also encouraged Twitter followers to watch the recorded videos on YouTube if they could not participate live.⁸⁹⁴

youtube.com/watch?v=WTRVwGiJFyE; Celsius, Celsius AMA December 17 2021, YouTube (December 17, 2021), <https://www.youtube.com/watch?v=iCYU5UVOea8>.

⁸⁸⁹ See, e.g., Celsius, Celsius AMA January 21 2022, YouTube (January 21, 2022), [https://www.youtube.com/ Service Agreement](https://www.youtube.com/Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. watch?v=fKq5J6DqsOw; Celsius, Celsius AMA September 10 2021, YouTube (September 10, 2021), <https://www.youtube.com/watch?v=lc8crMFnRgY>.

⁸⁹⁰ Celsius, Celsius AMA October 1 2021, YouTube (October 1, 2021), [https://www. Service Agreement](https://www.Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. youtube.com/watch?v=mUokZbnfFyE.

⁸⁹¹ See, e.g., @CelsiusNetwork, Twitter (May 20, 2022) (“We’re live with @Mashinsky, @Zach_HODL_ON, @NukeGold, & @CryptoWendyO #AskMashinskyAnything Join us on YouTube”).

⁸⁹² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁸⁹³ @CelsiusNetwork, Twitter (March 26, 2021); Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023).

⁸⁹⁴ See, e.g., @CelsiusNetwork, Twitter (May 20, 2022) (“We’re live with @Mashinsky, @Zach_HODL_ON, @NukeGold, & @CryptoWendyO #AskMashinskyAnything Join us on YouTube”).

A. Celsius Claimed Its Community Came First.

Celsius frequently represented that it intended to create a “community” amongst its customers, to whom Celsius referred to as “the Celsians.”⁸⁹⁵ Celsius paired its public goal of creating a Celsius community with its promise that Celsius would provide a measure of altruistic goodwill to customers. In a since-deleted 2019 blog post, Celsius wrote that it was “founded by an innovative team with a simple idea: financial services should only ever act in the best interest of their community.”⁸⁹⁶ The post went on to distinguish Celsius from interest-earning accounts at its competitor, BlockFi.⁸⁹⁷ Celsius noted that BlockFi’s terms of use expressly stated that BlockFi did not have a fiduciary relationship with its customers.⁸⁹⁸ Mr. Mashinsky stated in this post that he “cannot imagine defining such an untrusting relationship between our community and our company.”⁸⁹⁹

⁸⁹⁵ Celsius, Proof of Community, <https://celsius.network/proof-of-community> (last visited January 29, 2023); @Mashinsky, Twitter (January 29, 2019) (“We have not done any real marketing up to this point. All growth has been organic. Our goal was to build an exceptional product first and then come to the community with a fully functional and proven offering. . . .”); @Mashinsky, Twitter (December 5, 2021) (“. . . More coins for Celsians when you earn in #CEL”).

⁸⁹⁶ Mashinsky, Alex, Celsius is Nothing Like BlockFi. Here’s why, Celsius (March 12, 2019), <https://web.archive.org/web/20190330071319/https://medium.com/@CelsiusNetwork/celsius-network-is-nothing-like-blockfi-heres-why-2f933412a51f>.

⁸⁹⁷ Mashinsky, Alex, Celsius is Nothing Like BlockFi. Here’s why, Celsius (March 12, 2019), <https://web.archive.org/web/20190330071319/https://medium.com/@CelsiusNetwork/celsius-network-is-nothing-like-blockfi-heres-why-2f933412a51f>.

⁸⁹⁸ Mashinsky, Alex, Celsius is Nothing Like BlockFi. Here’s why, Celsius (March 12, 2019), <https://web.archive.org/web/20190330071319/https://medium.com/@CelsiusNetwork/celsius-network-is-nothing-like-blockfi-heres-why-2f933412a51f>.

⁸⁹⁹ Mashinsky, Alex, Celsius is Nothing Like BlockFi. Here’s why, Celsius (March 12, 2019),

He then “encourage[d]” readers to “read our own terms and conditions and see how we are acting in your best interest.”⁹⁰⁰ Mr. Mashinsky told the Examiner that he never personally read the Celsius Terms of Use.⁹⁰¹

In the first version of the Celsius Terms of Use, governing all Celsius products and in effect at the time of this 2019 blog post, Celsius disclaimed any relationship with its customers, stating “no provision contained herein shall be deemed to create any relationship between the parties hereto other than the relationship of Celsius and User.”⁹⁰² The initial Terms of Use also disclaimed any warranty of Celsius’s services and contained provisions limiting its liability.⁹⁰³ Starting with the second iteration of the Terms of Use that went into effect on March 5, 2020, and continuing through the version published on April 14, 2022, Celsius told its customers that “[t]hese Terms and the holding of [the] Digital

<https://web.archive.org/web/20190330071319/https://medium.com/@CelsiusNetwork/celsius-network-is-nothing-like-blockfi-heres-why-2f933412a51f>.

⁹⁰⁰ Mashinsky, Alex, Celsius is Nothing Like BlockFi. Here’s why, Celsius (March 12, 2019), <https://web.archive.org/web/20190330071319/https://medium.com/@CelsiusNetwork/celsius-network-is-nothing-like-blockfi-heres-why-2f933412a51f>.

⁹⁰¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁹⁰² *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC Providing Terms Of use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393] at Ex. A-1 at Art. XV.

⁹⁰³ *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC Providing Terms Of use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393] at Ex. A-1 at Disclaimer of Warranties, Limitation of Liability, and Art. VII.

Asset relationship does not create a fiduciary relationship between us and you. . . .”⁹⁰⁴

On March 11, 2018, Celsius posted to Twitter: “Integrity is at the forefront of every step we take, putting the community first. You will hear @Mashinsky regularly share his beliefs about if you #DoGood you will also #DoWell.”⁹⁰⁵ On October 6, 2020, Celsius posted to its blog:

What we bring to the economy, using what blockchain enables us, is a financial institution that puts the community first and offers customers the best income because we can keep the expenses minimal. This is also a model to bring the full financial services to truly unbanked part[s] of the world which could, one day, make the cryptocurrency economy a reality for the whole worldwide population. Can we really bring unprecedented financial freedom, economic opportunity and income equality to everyone in the world? We are Celsius. We dream big.⁹⁰⁶

Celsius also regularly addressed its communications with customers to the “community”⁹⁰⁷ and held in-person “meetups” in various locations for customers

⁹⁰⁴ *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC Providing Terms Of use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393] at Ex. A-2 – A-8 at Risk Disclosure.

⁹⁰⁵ @CelsiusNetwork, Twitter (March 11, 2018).

⁹⁰⁶ Why is the use of blockchain effective in the financial services industry? Celsius (October 6, 2020), <https://celsiusnetwork.medium.com/why-is-the-use-of-blockchain-effective-in-the-financial-services-industry-bde42c8fae82> (last visited January 29, 2023).

⁹⁰⁷ See, e.g., Important Community Update, Celsius (July 13, 2022), <https://celsiusnetwork.medium.com/important-community-update-dafde3c6b456> (last visited January 29, 2023); A note to the Celsius community, Celsius (June 19, 2022), <https://celsiusnetwork.medium.com/a-note-to-the-celsius-community-e5af1f5> *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. a7998 (last visited January 29, 2023); A Memo to the Celsius Community, Celsius (June 12, 2022), <https://celsiusnetwork.medium.com/a-memo-to-the-celsius-community-59532a06ecc6> (last visited January 29, 2023); Celsius Community Update – July 2, 2021, Celsius (July 2, 2021) <https://celsiusnetwork.medium.com/celsius-community-update-july-2-2021-61a432cd72ba> (last visited January 29, 2023).

to meet Celsius employees.⁹⁰⁸ In the weekly AMAs, Mr. Mashinsky told viewers that “we always lean on the conservative side . . . because we have to protect the community first”⁹⁰⁹ and that Celsius sought to hire people with a “proven” history of “put[ting] the community first.”⁹¹⁰ Mr. Mashinsky often said that Celsius could “do good and do well at the same time.”⁹¹¹

Celsius’s internal marketing strategy emphasized the “community first” theme. Celsius’s internal “Brand Guidelines” emphasized the community that Celsius claimed it put “first.”⁹¹² The Brand Guidelines directed Marketing personnel to use language in public statements such as: “Do well by doing good.”⁹¹³ “Giving back is in our DNA, and we always want to put our community

⁹⁰⁸ Celsius meetups, Celsius, <https://celsius.network/meetups> (last visited January 29, 2023).

⁹⁰⁹ Celsius, Celsius AMA July 2nd 2021, YouTube (July 2, 2021), [https://www. Service Agreement](https://www.ServiceAgreement.com/watch?v=HzEHCK1FSCo) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [youtube.com/watch?v=HzEHCK1FSCo](https://www.youtube.com/watch?v=HzEHCK1FSCo).

⁹¹⁰ Celsius, The Celsius Web App Demo! – Celsius AMA (January 22nd, 2021), YouTube [https://www. Service Agreement](https://www.ServiceAgreement.com/watch?v=zIfTYHwhfc4) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [youtube.com/watch?v=zIfTYHwhfc4](https://www.youtube.com/watch?v=zIfTYHwhfc4).

⁹¹¹ Celsius, Celsius AMA October 8th 2021, YouTube (October 8, 2021) [https://www. Service Agreement](https://www.ServiceAgreement.com/watch?v=UPOEPVJdcFk) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [youtube.com/watch?v=UPOEPVJdcFk](https://www.youtube.com/watch?v=UPOEPVJdcFk); Celsius, Celsius Network AMA – Ask Mashinsky Anything! YouTube (November 26, 2019), <https://youtu.be/H1n5g7uJyvQ>; Celsius, Celsius AMA January 28th 2022, YouTube (January 28, 2022), [https:// Service Agreement](https://www.ServiceAgreement.com/watch?v=erQn2wczFsk) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [youtu.be/erQn2wczFsk](https://www.youtube.com/watch?v=erQn2wczFsk); Celsius, Celsius AMA February 4th 2022, YouTube (February 4, 2022), <https://youtu.be/V1wRAu5A-jw>.

⁹¹² Celsius, Celsius Brand Guidelines 2021 at 5, CEL_EXAM-00013935.

⁹¹³ Celsius, Celsius Brand Guidelines 2021 at 5, CEL_EXAM-00013935.

first.”⁹¹⁴ “We earn using our community’s capital so it’s only fair we share our revenue with them.”⁹¹⁵

B. Celsius Claimed It Offered Financial Freedom.

Celsius repeatedly represented that it was better than a bank, frequently using the hashtag “#unbankyourself,”⁹¹⁶ and that Celsius customers could gain “financial freedom” by joining Celsius.⁹¹⁷ Celsius explained on its website that “P2P,” which typically means peer-to-peer, instead signals financial freedom: “At Celsius, we believe P2P stands for Power to the People.”⁹¹⁸ Likewise, in 2018, Mr. Mashinsky posted to Twitter that “P2P for me means #Power2ThePeople, #Cryptocredit & #FinancialFreedom by the people for the people! #CelsiusNetwork.”⁹¹⁹ Celsius posted to Twitter:

We're providing a platform of curated services that have been abandoned by big banks — things like fair interest, zero fees & lightning quick transactions. Our goal is to disrupt the financial industry & introduce financial freedom through crypto.⁹²⁰

⁹¹⁴ Celsius, Celsius Brand Guidelines 2021 at 5, CEL_EXAM-00013935.

⁹¹⁵ Celsius, Celsius Brand Guidelines 2021 at 5, CEL_EXAM-00013935.

⁹¹⁶ @CelsiusNetwork, Twitter (September 15, 2019) (“We're doubling down on \$CEL #UnbankYourself #PassiveIncome #Blockchain. . .”); @Mashinsky, Twitter (February 5, 2020) (“It is really easy to partner with @CelsiusNetwork to earn income. go to celsius.network/referral/ register, generate a link, post it on your site and social media...and we will pay you for every new user you bring. We need 100m new users so show us what you got !!! #unbankyourself”).

⁹¹⁷ See, e.g. Celsius, Proof of Community, YouTube (March 29, 2021), <https://www.ServiceAgreement.com> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [youtube.com/watch?v=udwWD5oy7i4](https://www.youtube.com/watch?v=udwWD5oy7i4).

⁹¹⁸ Celsius, Crypto Glossary, Celsius, <https://celsius.network/glossary>.

⁹¹⁹ @Mashinsky, Twitter (April 15, 2018).

⁹²⁰ @CelsiusNetwork, Twitter (October 31, 2021).

And on Celsius's YouTube channel, the caption to a September 24, 2021 video stated, "Our mission: To put unparalleled economic freedom in the hands of the people. Join the revolution, join Celsius and unbank yourself!"⁹²¹

The internal Brand Guidelines encouraged Marketing personnel to include this theme in its public messages, including with language such as,

[t]he financial industry has a history of hurting groups of people and thwarting their dreams of financial independence with exclusionary or exploitative practices. But we're not for a wealthy group of a few elites. We're for democratized wealth for all.⁹²²

Celsius publicly described how it created "democratized wealth for all" through its business model in a since-deleted blog post, stating that,

[t]he Celsius business model is structured to do the exact opposite of what banks do — by giving 80% of total revenue back to our community each week in the form of earned interest. We earn profits by lending coins to hedge funds, exchanges, and institutional traders, and by issuing asset-backed loans at an average of 9% interest.⁹²³

Mr. Mashinsky publicly promoted the concepts of transparency, trust, and financial freedom in press interviews and in quotes he provided for industry publications. The Examiner reviewed more than 350 articles in which Mr. Mashinsky was quoted. Selected quotations include the following:

⁹²¹ Celsius, A message to the Songbird (SGB) community, YouTube (September 24, 2021), <https://www.youtube.com/watch?v=6CTpXjZrTsQ>.

⁹²² Celsius, Brand Guidelines July 2021, Internal Company Document (July 2021), CEL_EXAM-00178843 at 4.

⁹²³ Celsius Network Interest Rates, Explained, Celsius (April 24, 2019), <https://web.archive.org/web/20210623012453/https://celsiusnetwork.medium.com/celsius-network-interest-rates-explained-a336a52e163d>; Urata-Thompson, Harumi, What We Do & How We Do It, Celsius (August 19, 2020), [https://web.archive.org/Service Agreement](https://web.archive.org/Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5], web/20201126015631/https://celsiusnetwork.medium.com/what-we-do-how-we-do-it-9a82124f7159.

- We have seen time and time again that customers choose Celsius for yield and loans because they trust us, and our goal is to always act in their best interests and consistently deliver industry-leading transparency.⁹²⁴
- Celsius was built to act in the best interest of the community, and we have consistently delivered honest, transparent, and rewarding financial services.⁹²⁵
- Our relationships with our 230,000 community members are built on trust, because they count on us to act in their best interests . . . we’re providing additional transparency into our business, which remains one of the industry’s most reliable, secure and rewarding platforms for putting unparalleled economic freedom into the hands of the people.⁹²⁶

C. Celsius Claimed It Was Secure And Safe.

Celsius stressed security, stating on its website that “our top priority is keeping your assets secure” and citing “[t]op-tier Security & Cyber Defense leaders driving forward and protecting a mission-driven community.”⁹²⁷ Celsius also emphasized the “safety” of the Celsius platform as a low-risk place for customers to invest their crypto.

⁹²⁴ Celsius Crosses \$5.3B in Assets, Grows Total Assets 10X during 2020, GlobeNewswire (January 21, 2021), <https://www.globenewswire.com/en/news-release/2021/01/21/2162314/0/en/Celsius-Crosses-5-3B-in-Assets-Grows-Total-Assets-10X-during-2020.html>.

⁹²⁵ Celsius has paid over \$250 million in crypto yield to its customers, PR Newswire (February 15, 2021), <https://www.prnewswire.com/news-releases/celsius-has-paid-over-250-million-in-crypto-yield-to-its-customers-301228371.html>.

⁹²⁶ Celsius Network Partners with Chainalysis To Confirm Audit of \$3.31 Billion in Assets, PR Newswire (December 9, 2020), <https://www.prnewswire.com/news-releases/celsius-network-partners-with-chainalysis-to-confirm-audit-of-3-31-billion-in-assets-301189705.html>.

⁹²⁷ Celsius, Celsius Security, <https://celsius.network/security-insights> (last visited January 29, 2023).

Regarding security, Celsius's website promoted its security certifications, "24/7 Security Operations Center," a global team of cybersecurity experts, and "industry-leading security infrastructure & asset protection."⁹²⁸ During an October 2021 AMA, Celsius's Chief Security Officer stated, "Our security slogan is 'Keep safe, secure, and HODL'⁹²⁹ . . . That's key for us and for you, of course."⁹³⁰

The internal "Brand Guidelines" suggested to Marketing personnel that they use specific language to describe the security Celsius customers could expect, such as, "We're for anyone who's ever looked at their mattress and wondered if it could do a better job of keeping their money safe."⁹³¹ Celsius also reassured customers about its security by pointing to its insurance.⁹³² On February 5, 2021, Mr. Mashinsky announced:

You asked for it and we listened. We will be launching a self-insurance plan for all @CelsiusNetwork users that will cover all your coins, it will

⁹²⁸ Celsius, Celsius Security, <https://celsius.network/security-insights> (last visited January 29, 2023).

⁹²⁹ Celsius's website provides a glossary defining various common terms in the Celsius parlance. "HODL: A misspelling of the word 'hold' that has become a cryptocurrency rallying cry that essentially means 'Hold on for dear life.' If you're a HODLer, then you believe in holding onto your digital asset. You believe its value will increase in the future, and you're not one to sell early, even during periods of increased market volatility." Celsius, Glossary, <https://celsius.network/glossary> (last visited January 29, 2023).

⁹³⁰ Celsius, Celsius AMA October 15th 2021, YouTube (October 15, 2021), https://www.ServiceAgreement.com/watch?v=N7oBe22Mvoc&list=PLljzjU2vvKVMNgmFM2oV79WQ0iSsqf_5oV&index=33.

⁹³¹ Celsius, Celsius Brand Guidelines 2021 at 4, CEL_EXAM-00013935.

⁹³² Horizen Clips, Alex Mashinsky from Celsius Network discusses Horizen (ZEN), YouTube (December 6, 2020), <https://www.youtube.com/watch?v=Kyn3N3Are1o>.

take us a few months but it will insure coins lent out to institutions and exchanges. No one else has such insurance today.⁹³³

Celsius never launched this self-insurance plan.⁹³⁴ In fact, starting with the second version of its Terms of Use, and continuing through the version issued on April 14, 2022, Celsius told its customers, “[Y]our Account is not a checking or savings account, and it is not covered by insurance against losses.”⁹³⁵

Celsius repeatedly stressed the safety of assets on its platform. In a since-deleted blog post written by Celsius’s former Chief Financial Officer, Ms. Urata-Thompson, and titled “What We Do & How We Do It,” Celsius claimed to protect customers’ deposited crypto assets.⁹³⁶ Ms. Urata-Thompson wrote:

What Celsius does best is identify the counterparties we believe are most suitable to transact within lending, borrowing, and other similar transactions. We believe it is very important to carefully vet all of the counterparties we transact with by looking at a number of factors including their financial credentials . . . If we conclude that the counterparty has a high-risk profile, we may not move forward with them.

⁹³³ @Mashinsky, Twitter (February 5, 2021). Frost, Liam, Celsius CEO Alex Mashinsky announces self-insurance for all its users’ coins, CryptoSlate (February 6, 2021), <https://cryptoslate.com/celsius-ceo-alex-mashinsky-announces-self-insurance-all-its-users-coins/> (last visited January 29, 2023).

⁹³⁴ Celsius, Does Celsius have an insurance policy? (2022), <https://support.celsius.network/hc/en-us/articles/360002174718-Does-Celsius-have-an-insurance-policy-> (last visited January 29, 2023) (“Celsius does not have an insurance policy. Fireblocks, our custodian, provides insurance on digital assets held by Celsius. However, we generate interest rewards by deploying assets. When these assets are out of Celsius’s control, they can’t be insured by such insurance.”); Celsius, Terms of Use (Last Revised: September 29, 2022), <https://celsius.network/terms-of-use> (last visited January 29, 2023) (“your Celsius Account is not a checking or savings account, and it is not covered by insurance against losses”).

⁹³⁵ *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC Providing Terms Of use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393] at Ex. A-2 – A-8 at Risk Disclosure.

⁹³⁶ Urata-Thompson, Harumi, What We Do & How We Do It, Celsius (August 19, 2020), <https://web.archive.org/web/20201126015631/https://celsiusnetwork.medium.com/what-we-do-how-we-do-it-9a82124f7159>.

If we do, we take a very conservative position such as only allowing very small or overcollateralized positions.⁹³⁷

Beginning as early as March 2020, Mr. Mashinsky repeatedly claimed that Celsius's risk management team avoided risky investments and instead obtained high yield at low risk. On the Celsius YouTube channel, in a video titled "How Celsius earns yield," Mr. Mashinsky explained, "Celsius generates a certain amount of profit by lending assets . . . the key is to get high yield at a low risk."⁹³⁸

During AMAs, this theme was repeated often. For example, in one AMA, Mr. Mashinsky stated, "The credit goes to a finance department [and] the credit risk management for not . . . lending to risky institutions or risky hedge funds. We stick with the highest quality."⁹³⁹ In another AMA, Mr. Mashinsky said, "Our number one priority is keeping the funds that we're lending out safe and we would rather . . . lend large scale to a counterparty . . . than to risk earning a ridiculously high yield lending to a shady character."⁹⁴⁰ In an October 8, 2021 AMA, Chief Investment Officer van Etten said,

⁹³⁷ Urata-Thompson, Harumi, What We Do & How We Do It, Celsius (August 19, 2020), <https://web.archive.org/web/20201126015631/https://celsiusnetwork.medium.com/what-we-do-how-we-do-it-9a82124f7159>.

⁹³⁸ Celsius, How Celsius earns yield, YouTube (December 3, 2020), [https://www.Service Agreement dated December 31, 2020, Case No. 22-1139 \[Dkt. 24-5\]. youtube. Service Agreement dated December 31, 2020, Case No. 22-1139 \[Dkt. 24-5\]. com/watch?v=_W327zdQ0x0](https://www.ServiceAgreement.com/watch?v=_W327zdQ0x0).

⁹³⁹ Celsius, March 13 2020 AMA, YouTube (March 13, 2020), [https://www.youtube.com/ Service Agreement dated December 31, 2020, Case No. 22-1139 \[Dkt. 24-5\]. watch?v=MZIL_IrgV3E&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSqf_5oV&index=48](https://www.youtube.com/watch?v=MZIL_IrgV3E&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSqf_5oV&index=48).

⁹⁴⁰ Celsius, Celsius AMA October 1st 2021, YouTube (October 1, 2021), [https://www.youtube.com/ Service Agreement dated December 31, 2020, Case No. 22-1139 \[Dkt. 24-5\]. watch?v=mUokZbnfFyE](https://www.youtube.com/watch?v=mUokZbnfFyE).

it's not that hard to create higher returns. It's hard to do it in a responsible way where you can actually sustain these returns for the longer term . . . we are analyzing constantly, what are the risks of creating this yield, from an investment risk perspective, counterparty risk to security risk, operational risk, all of these above liquidity risk.⁹⁴¹

Celsius also made numerous representations about the importance of collateralized loans. Celsius claimed that it did not “do non-collateralized loans . . . Celsius will not do that because that would be taking too much risk on your behalf.”⁹⁴² On March 11, 2019, Mr. Mashinsky posted to Twitter: “No, we loan coins out at up to 150% collateral.”⁹⁴³ Two months later, on May 16, 2019, Celsius posted to Twitter, “We require 200% minimum collateral on all loans. That means it doesn’t matter very much how risky their bets are, because we hold more than the total loan value at all times, and if they default we have recourse.”⁹⁴⁴ On July 8, 2019, Celsius posted to Twitter:

\$ borrowers must provide over 100% collateral to secure a loan. Institutional borrowers have additional options to secure a loan (collateral, parent guarantee). We do not provide loans to unsecured borrowers. To date, we have not had a single borrower default on their loan.⁹⁴⁵

Mr. Mashinsky repeated similar statements on Twitter. On April 4, 2020, Mr. Mashinsky posted to Twitter, “We only do asset backed lending so always

⁹⁴¹ Celsius, Celsius AMA October 8th 2021, YouTube (October 8, 2021), [https://www.youtube.com/ Service Agreement](https://www.youtube.com/Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. watch?v=UPOEPVJdcFk.

⁹⁴² Celsius, Celsius Network Co-Founder AMA with Alex Mashinsky and Daniel Leon, YouTube (July 17, 2020), <https://www.youtube.com/watch?v=csFrn4XtwL0>.

⁹⁴³ @Mashinsky, Twitter (March 11, 2019).

⁹⁴⁴ @CelsiusNetwork, Twitter (May 16, 2019).

⁹⁴⁵ @CelsiusNetwork, Twitter (July 8, 2019).

have 200% collateral.”⁹⁴⁶ In a November 6, 2020 AMA, Mr. Mashinsky said, “We have zero bad loans, we have zero loans that don’t pay their interest . . . Celsius is very, very strict who we lend to, we only lend to the first tier institutions, first tier exchanges. We do not do unsecured lending.”⁹⁴⁷ This particular AMA caused concern for the then-Chief Investment Officer and Chief Financial Officer Urata-Thompson, who wrote to Johannes Treutler, then Head of Trading Desk, in a Slack, “You talking about unsecured loans? I just told him that the number is increasing and overall ratio of collateral with institution is going down.”⁹⁴⁸ Mr. Treutler responded, “Yes – so why does he publish so dangerous statements ‘Everyone out there – if you ever got a[n] unsecured loan – tell everyone that I’m a liar.’”⁹⁴⁹

Mr. Mashinsky continued to reassure Celsius’s customers about the safety of their deposits. “A run on the bank cannot happen at Celsius because Celsius never lends more than what it has ...we always have enough coins and enough collateral and so on to return all the assets to all of our users.”⁹⁵⁰ “Celsius takes full responsibility if anything goes bad we take full responsibility that's part of why we raised it 750 million and now we have over two billion dollars on our

⁹⁴⁶ @Mashinsky, Twitter (April 4, 2020).

⁹⁴⁷ Celsius, Celsius AMA – Ask Mashinsky Anything – Friday, November 6, YouTube (November 6, 2022), <https://www.youtube.com/watch?v=apWkwq8uscU>.

⁹⁴⁸ Urata-Thompson, Harumi, Slack (November 7, 2020), CEL-UCC-00278037.

⁹⁴⁹ Treutler, Johannes, Slack (November 7, 2020), CEL-UCC-00278037.

⁹⁵⁰ Celsius, Expansion in Asia with Special Guest Lennis Lai (OkEx) - Celsius AMA, YouTube (April 30, 2021), <https://www.youtube.com/watch?v=LalFR4BuIno>.

balance sheet again more than anybody else.”⁹⁵¹ Mr. Mashinsky continued to assert that Celsius did not offer non-collateralized loans as late as April 2022, “On the institutional side, we have very credible counterparties that have billions of dollars on their balance sheet and for those, we have undercollateralized but we don’t offer any non-collateralized loans.”⁹⁵²

Even as the crypto market began to spiral with the collapse of Terra/Luna in early May 2022, discussed in further detail below at Part Two, Section VII.D., Celsius continued to promote its conservative risk management. On May 11, 2022, both Celsius and Mr. Mashinsky posted to Twitter: “As part of our responsibility to serve our community, @CelsiusNetwork implemented and abides by robust risk management frameworks to ensure the safety and security of assets on our platform. All user funds are safe. We continue to be open for business as usual.”⁹⁵³

On June 7, 2022, Celsius posted to its blog, “Damn the Torpedoes, Full Speed Ahead:” “Celsius has the reserves (and more than enough ETH) to meet obligations, as dictated by our comprehensive liquidity risk management framework.”⁹⁵⁴ The next day, Celsius posted to its blog a statement from Chief

⁹⁵¹ Celsius, Celsius AMA 10th December 2021, YouTube (December 10, 2021), <https://www.youtube.com/watch?v=X304U3isWzg>.

⁹⁵² Celsius CEO on best practices for retail investing in cryptocurrencies, CNBC (April 13, 2022) <https://www.cnbc.com/video/2022/04/13/celsius-ceo-on-best-practices-for-retail-investing-in-cryptocurrencies.html> (last visited January 29, 2023).

⁹⁵³ @Celsius, Twitter (May 11, 2022); @Mashinsky, Twitter (May 11, 2022).

⁹⁵⁴ Damn the Torpedoes, Full Speed Ahead, Celsius (June 7, 2022), <https://celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af>.

Financial Officer Bolger referencing Celsius's "world-class risk management team."⁹⁵⁵ Finally, even when Celsius paused withdrawals, swaps, and transfers, on June 12, 2022, Celsius invoked its risk management framework, "[T]o adhere to our risk management framework, we have activated a clause in our Terms of Use that will allow for this [pause] to take place."⁹⁵⁶

Customers said that in hindsight, they felt misled about the "extraordinary risk" Celsius was taking and did not realize there was a significant downside risk of loss.⁹⁵⁷ A customer wrote to the Examiner, "I just continue[d] to add because I thought the platform was safe . . . My whole life saving[s] [are] involved . . . Celsius got it all."⁹⁵⁸ Another customer wrote to the Examiner that Mr. Mashinsky was "creat[ing] a sense of safety for customers by telling them every week their funds were safe."⁹⁵⁹ A third customer wrote, "I was tricked into thinking Celsius was as safe as a bank account, by watching Alex's AMAs . . . I ended up having 75% of my savings in there."⁹⁶⁰

⁹⁵⁵ Get to Know Rod Bolger, Chief Financial Officer, Celsius, Celsius (June 8, 2022), <https://celsiusnetwork.medium.com/get-to-know-rod-bolger-chief-financial-officer-celsius-9c60718f205d>.

⁹⁵⁶ A Memo to the Celsius Community, Celsius (June 12, 2022), [https://celsiusnetwork.Service Agreement](https://celsiusnetwork.Service%20Agreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [medium.com/a-memo-to-the-celsius-community-59532a06ecc6](https://celsiusnetwork.medium.com/a-memo-to-the-celsius-community-59532a06ecc6).

⁹⁵⁷ Examiner Interview of Customer (December 8, 2022).

⁹⁵⁸ Email to the Examiner (Oct. 10, 2022).

⁹⁵⁹ Email to the Examiner (Oct. 23, 2022).

⁹⁶⁰ Email to the Examiner (Dec. 10, 2022).

D. Celsius Claimed It Gave 80% Back To Customers.

Celsius frequently stated that Celsius returned up to 80% of its profits to its customers. This concept was regularly referenced and became a mantra—in customer marketing emails,⁹⁶¹ AMAs,⁹⁶² tweets,⁹⁶³ and by Celsius employees who were trained to repeat this message to customers during customer interactions.⁹⁶⁴

For example, on March 19, 2019, Celsius posted to Twitter, “Our model is simple, we give 80% back to the community. Banks keep 80% to themselves. It’s not like there is a complicated algorithm that nobody knows about.”⁹⁶⁵ Similarly,

⁹⁶¹ Celsius, 5 Rewarding Reasons to #UnbankYourself with Celsius, Email (November 11, 2019), CEL-UCC-00001727.

⁹⁶² Celsius, Celsius Network AMA – Ask Mashinsky Anything!, YouTube (November 26, 2019), https://www.youtube.com/watch?v=H1n5g7uJyvQ&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSfq_5oV&index=54; Celsius, Fireside Finance with Alex Mashinsky, YouTube (March 20, 2020), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=4_a9QWuXMF0&list=ServiceAgreement](https://www.youtube.com/watch?v=4_a9QWuXMF0&list=ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. PLLjzjU2vvKVMNgm *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. FM2oV79WQ0iSfq_ *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. 5oV&index=46; Celsius, Celsius Network Team AMA, YouTube (July 2, 2020), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=Ym1EjbThjVk&list=ServiceAgreement](https://www.youtube.com/watch?v=Ym1EjbThjVk&list=ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. PLLjzjU2vvKVM *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. Ngm *Service Agreement* dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. FM2oV79WQ0iSfq_5oV&index=44; Celsius, Crypto Volatility and Elon Musk – Celsius AMA May 14th 2021, YouTube (May 14, 2021), <https://www.youtube.com/ServiceAgreement> dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=4r4jnEgeWl8](https://www.youtube.com/watch?v=4r4jnEgeWl8)

⁹⁶³ @Mashinsky, Twitter (September 8, 2019); @Mashinsky, Twitter (October 22, 2019); @Mashinsky, Twitter (July 5, 2020); @Mashinsky, Twitter (October 26, 2020); @Mashinsky, Twitter (November 23, 2020).

⁹⁶⁴ Celsius, Sprint Training / Celsius User, Internal Company Document (November 15, 2021), CEL-UCC-00106886 at 4.

⁹⁶⁵ @CelsiusNetwork, Twitter (March 19, 2019).

on September 19, 2019, Celsius replied to a tweet explaining, “Our rates are funded by our own revenue - 80% of our total revenue goes back to our depositors as weekly interest income payments. Your bank could pay you the same rates, they just prefer to keep the profits for themselves. #UnbankYourself.”⁹⁶⁶ Celsius customers told the Examiner that this particular message—with 80% of Celsius’s total revenue going back to Celsius customers—made Celsius appear trustworthy and attracted them to Celsius.⁹⁶⁷

Despite these statements, the Examiner found no evidence that Celsius, at any point in time, set its reward rate based on its revenues. In response to regulatory inquiries in June and July 2021, Celsius described its rate-setting process as involving a multitude of factors, but indicated that “a customer’s return is not determined by reference (or linked) to Celsius’s generation of revenues from cryptoassets received from customers.”⁹⁶⁸ Instead, Celsius told the regulators that interest rates were set on a periodic basis, in large part, based on supply and demand.⁹⁶⁹ Celsius stated in these letters that it lowered its reward rates when Celsius had sufficient assets for Celsius’s foreseeable needs

⁹⁶⁶ @CelsiusNetwork, Twitter (September 19, 2019).

⁹⁶⁷ Examiner Interview of Customer (December 8, 2022); Examiner Interview of Customer (December 9, 2022); Examiner Interview of Customer (December 6, 2022) (customer remembered the split being 70% to the community, 30% for the company).

⁹⁶⁸ Cohen-Pavon, Roni, Letter to Financial Conduct Authority, Letter (June 11, 2021), CEL-UCC-00192896 at 1-2; Cohen-Pavon, Roni, Letter to Financial Conduct Authority, Letter (July 2, 2021), CEL-UCC-00192947 at 2; Sikora, John, Interest-Bearing Cryptocurrency Deposit Accounts, Letter (June 11, 2021), CEL-UCC-00023339.

⁹⁶⁹ Cohen-Pavon, Roni, Letter to Financial Conduct Authority, Letter (June 11, 2021), CEL-UCC-00192896 at 1-2; Cohen-Pavon, Roni, Letter to Financial Conduct Authority, Letter (July 2, 2021), CEL-UCC-00192947 at 2; Sikora, John, Interest-Bearing Cryptocurrency Deposit Accounts, Letter (June 11, 2021), CEL-UCC-00023339.

and raised those rates when it needed to attract particular crypto assets to its platform.⁹⁷⁰ Celsius stated that its “[reward] rates are not subject or tied to the future performance of the Company” and that Mr. Mashinsky’s repeated assertions otherwise were not to be taken literally but simply reflected Celsius’s “philosophical intent.”⁹⁷¹ Mr. Mashinsky told the Examiner that Celsius’s business model was “never 80/20 . . . sometimes it was 70 or 90%, because you don’t control it.”⁹⁷²

Celsius had no formal policy to govern the setting of reward rates prior to July 2021, when it issued its first Reward Rates policy.⁹⁷³ Before July 2021, Celsius had no clear process in place to guide rate-setting and made these decisions on an ad hoc basis. During this time, many Celsius employees felt that rate-setting decisions were driven by marketing concerns about keeping Celsius’s rates at or above those of its competitors to avoid losing customers rather than economic considerations and profitability.⁹⁷⁴ As discussed above, Celsius employees agreed that Mr. Mashinsky in particular drove rate-setting decisions based primarily on competitor rates, and that he generally rejected the

⁹⁷⁰ Cohen-Pavon, Roni, Letter to Financial Conduct Authority, Letter (June 11, 2021), CEL-UCC-00192896 at 1-2.

⁹⁷¹ Cohen-Pavon, Roni, Letter to Financial Conduct Authority, Letter (June 11, 2021), CEL-UCC-00192896, at 2.

⁹⁷² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁹⁷³ Celsius, Reward Rate Determination Policy, Internal Company Document (June 29, 2021), CEL-UCC-00147991 at 1.

⁹⁷⁴ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

premise that rates should be lowered based on the yield that Celsius itself could generate on the market.⁹⁷⁵ This remained the case through at least early 2022, and contributed to Celsius's negative NIM.

E. Celsius Claimed Its Customers Owned Their Crypto Assets.

Celsius consistently represented to its current and prospective customers that crypto assets belonged to its customers, not Celsius. Celsius used phrases such as “your coins,” “my coins,” or “your crypto” in its explanations of the services Celsius provided to its customers and on its website and mobile application.⁹⁷⁶ In a since-deleted August 2019 blog post, Ms. Urata-Thompson explained that Celsius was “not a bank and we do not take or hold deposits. We do, however, work with trusted third-party custodians who agree to hold your coins on your behalf.”⁹⁷⁷ In a November 26, 2019 AMA, Mr. Mashinsky stated, “These are your coins, not our coins. Whatever you put in, if you put in one Bitcoin, you will be withdrawing one Bitcoin . . . It's always your Bitcoin. Always your Ether. Always your CEL Token.”⁹⁷⁸ Yet, in his interview with the Examiner,

⁹⁷⁵ Examiner Interview of Ashley Harrell (Former Vice President of Finance and Director of Operations – Celsius, December 30, 2022); Examiner Interview of Rodney Sunada-Wong (Former Chief Risk Officer – Celsius, January 11, 2023); Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

⁹⁷⁶ Celsius, Level up with CEL Token, <https://celsius.network/cel-token-explainedm>; Celsius, Help Center, <https://support.celsius.network/hc/en-us>.

⁹⁷⁷ Urata-Thompson, Harumi, What We Do & How We Do It, Celsius (August 19, 2020), <https://web.archive.org/web/20201126015631/https://celsiusnetwork.medium.com/what-we-do-how-we-do-it-9a82124f7159>.

⁹⁷⁸ Celsius, Celsius Network AMA – Ask Mashinsky Anything!, YouTube (November 26, 2019), <https://www.youtube.com/watch?v=H1n5g7uJyvQ>.

Mr. Mashinsky stated that “100% of the actions are our actions, [the customer] can’t take any action [themselves] on the platform.”⁹⁷⁹

On February 10, 2020, Aliza Landes, then Vice President of Retail Lending, described taking a retail loan as “you’re not going into debt, you’re just borrowing against something you own.”⁹⁸⁰ On July 24, 2020, Mr. Mashinsky repeated this theme: “[W]hen you give us bitcoin it's not like it's ours, right? It's yours legally. It is still your bitcoin. The only thing we do is when you lend us your bitcoin, we lend them to people who pay us interest. When they return them, it goes back to the wallet and it's still yours from that wallet.”⁹⁸¹ On March 25, 2021, Mr. Mashinsky, posted on Twitter, in reply to a Twitter user who asked what would happen to their coins in the event of Celsius’s bankruptcy,⁹⁸² that “all coins are returned to their owners even in the case of bankruptcy.”⁹⁸³

Marketing emails from Celsius to customers continued this theme. These emails told customers that they could “deposit any amount of crypto and

⁹⁷⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁹⁸⁰ Celsius, Celsius Network AMA – Ask Aliza Anything!, YouTube (February 10, 2020), <https://www.youtube.com/watch?v=RIfECR1Ghhk>.

⁹⁸¹ Celsius, Celsius Network AMA with Alex Mashinsky and HFN’s Roni Cohen-Pavon, YouTube (July 24, 2020), <https://www.youtube.com/watch?v=kC-89USzxaM>.

⁹⁸² @Mashinsky, Twitter (March 25, 2021); @Wreck1tRolf, Twitter (March 24, 2021) (“Alex, I’ve asked a few times now, and directly to you but have yet to receive a response. What happens to my coins in the event that Celsius Network goes bankrupt”); @Wreck1tRolf, Twitter (March 25, 2021) (“I’ve never seen him speak about it or anything on Celsius stating what happens in the event of a bankruptcy. If you could point something specific out it would be greatly appreciated because I’m looking to send my crypto to Celsius but would like to know this first”).

⁹⁸³ @Mashinsky, Twitter (March 25, 2021).

instantly start earning unprecedented returns on your coins.”⁹⁸⁴ Celsius advertised its retail loans in marketing emails in 2020 by claiming, “Get the cash you need at the rates you deserve without having to sell your crypto.”⁹⁸⁵ Similarly, in 2021, marketing emails included phrases such as, “Your crypto is hard at work earning yield . . . you can also use our crypto to borrow dollars or stablecoins starting at 1% APR. That means you get cash in hand today without cashing out your crypto!”⁹⁸⁶ In early 2022, Mr. Mashinsky posted to Twitter, “Want to know how to buy a [\$1 million] home with your \$BTC and still own the coins? See how @NewsAsset [] did it with a loan from @CelsiusNetwork.”⁹⁸⁷

Celsius’s frequent representations that a customer retained ownership of assets deposited with Celsius were in tension with its Terms of Use beginning in March 2020. From March 2020 through September 29, 2020, the Terms of Use stated that the customer

grant[s] Celsius the right . . . to hold the Digital Assets available in your account in Celsius’ name or in another name, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership.⁹⁸⁸

⁹⁸⁴ Celsius, 5 Rewarding Reasons to #UnbankYourself with Celsius, Email (November 11, 2019), CEL-UCC-00001727.

⁹⁸⁵ Celsius, Celsius Network Weekly HODL Rates – Jan. 6, 2020, Email (January 6, 2020), CEL-UCC-00001875.

⁹⁸⁶ Celsius, Use your crypto to borrow [] at 1%, Email (April 28, 2021), CEL-UCC-00003076.

⁹⁸⁷ @Mashinsky, Twitter (January 13, 2022).

⁹⁸⁸ *Declaration of Alex Mashinsky, Chief Executive Officer of Celsius Network LLC, Providing Terms of Use Dating Back to February 18, 2018* dated August 8, 2022 [Dkt. 393], Exs. A-2, A-3, A-4] (emphasis added).

Beginning with the Terms of Use dated September 30, 2020, and continuing through the Terms of Use dated April 13, 2022, the pertinent language was modified to state that the customer

grant[s] . . . all right and title to such Digital Assets, including ownership rights, and the right, without further notice to you, to hold such Digital Assets in Celsius' own virtual wallet or elsewhere, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership.⁹⁸⁹

The Court recently held that customers transferred ownership of their coins to Celsius by agreeing to these Terms of Use.⁹⁹⁰

Mr. Mashinsky told the Examiner that he did not believe he had ever read any version of the Terms of Use, though he acknowledged that he “probably should have.”⁹⁹¹ He said that he asked his team to draft the terms of use to make clear that Celsius's “ethos was to represent the best interests of the customers.”⁹⁹²

⁹⁸⁹ *Declaration of Alex Mashinsky, Chief Executive Officer of Celsius Network LLC, Providing Terms of Use Dating Back to February 18, 2018* dated August 8, 2022 [Dkt. 393, Exs. A-5, A-6, A-7] (emphasis added). Version 8 contained the same phrasing regarding “right and title” but was modified to reflect the introduction of the Custody account. *Declaration of Alex Mashinsky, Chief Executive Officer of Celsius Network LLC, Providing Terms of Use Dating Back to February 18, 2018* dated August 8, 2022 [Dkt. 393, Ex. 8].

⁹⁹⁰ *Memorandum Opinion and Order Regarding Ownership Of Earn Account Assets* dated January 4, 2023 [Dkt. 1822] at 30..

⁹⁹¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁹⁹² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

F. Celsius Claimed It Was Transparent.

Celsius also represented to the public that it was transparent. The Celsius website invited potential customers to “[j]oin us for . . . next-level transparency.”⁹⁹³ A since-deleted 2019 Celsius blog post stated:

If a company isn’t able to explain their business model or vision in clear and simple terms, it’s a red flag that something *quite* isn’t right. Our team is hard at work acting in your best interest; and like our team, our business model is also straightforward and transparent.⁹⁹⁴

Mr. Mashinsky posted to Twitter in January 2019:

In 2019 we will publish to a blockchain all our transactions which will provide users transparency as to how many coins we have and what they are used for. No bank or financial institution provides such transparency today.⁹⁹⁵

Moreover, Celsius’s internal “Brand Guidelines” directed Marketing personnel to call Celsius “radically honest” in Celsius’s communications with customers, and to use language such as, “We earn and keep our community’s trust by pulling back the curtain and practicing unprecedented transparency in everything we do.”⁹⁹⁶

⁹⁹³ Celsius, Celsius homepage (as seen on January 6, 2022), <https://celsius.network/> (last visited January 29, 2023).

⁹⁹⁴ Celsius, Celsius Network is Nothing Like BlockFi. Here’s Why. (March 12, 2019), <https://web.archive.org/web/20190330071319/https://medium.com/@CelsiusNetwork/celsius-network-is-nothing-like-blockfi-heres-why-2f933412a51f> (last visited Jan. 23, 2023).

⁹⁹⁵ @Mashinsky, Twitter (January 9, 2019). Mr. Mashinsky told the Examiner that “a dozen people” had access to his Twitter account, @Mashinsky. Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

⁹⁹⁶ Celsius, Celsius Brand Guidelines 2021, CEL-EXAM-00013935, at 5.

G. Celsius Did Not Correct Its Misleading And Inaccurate Statements.

Despite Celsius's emphasis on its "next-level transparency,"⁹⁹⁷ AMAs and tweets frequently included statements by Mr. Mashinsky and others that were inaccurate and misleading. Celsius made efforts to later edit some of the inaccurate information out of the recorded AMA videos. Celsius, however, made no effort to retract or otherwise correct any inaccurate or misleading statements made during AMAs viewed live or before any edits were implemented.

Beginning in May 2021 and continuing through the last AMA in June 2022, Celsius attempted to contain the risks associated with inaccurate and misleading statements. Employees from the Risk Team, with assistance from Marketing and input from Compliance and Legal, established a process to remove these statements. This process occurred after the livestreams were aired and both before and after the videos were permanently posted to Celsius's YouTube channel.⁹⁹⁸ At times, the inaccurate and misleading statements were successfully removed; other times they were not, with inaccurate and misleading statements remaining in public web spaces as of the filing of this Report.⁹⁹⁹

⁹⁹⁷ Celsius, Celsius homepage (as seen on January 6, 2022), <https://celsius.network/> (last visited January 29, 2023).

⁹⁹⁸ Sunada-Wong, Rodney, Communication Risk, (January 28, 2022) CEL-UCC-00208957; Cohen-Pavon, Roni, Re: AMA YouTube Dec 10 -needed edits, Email (January 1, 2022) CEL-UCC-00207526; McCarthy, Tom, Fwd: April 22 YouTube AMA – Needed Edits, Email (June 21, 2022) CEL-UCC-00207932.

⁹⁹⁹ Celsius, Celsius AMA November 12 2021, YouTube (November 12, 2021) <https://www.youtube.com/watch?v=bTrByn1DAFo>; Celsius, Celsius AMA April 30, 2021, Pscp.Tv (last visited January 29, 2023), <https://www.pscp.tv/w/1OdKrVRvWzXKX>.

Throughout 2021 and 2022, as the editing process was set up and executed, Celsius continued to raise concerns not only about the accuracy of statements during the livestream AMAs, but also the possibility that Celsius customers and others would notice that Celsius was removing content from the AMAs between the livestream and the permanently posted videos.¹⁰⁰⁰

In May 2021, for the first time, Celsius's then-Chief Risk Officer Sunada-Wong raised questions about the accuracy of Mr. Mashinsky's statements during a live AMA and suggested removing the posted video of an AMA so that it could be edited. On May 1, 2021, Mr. Sunada-Wong wrote in an email:

I think the [A]pril 30th [2021] AMA video needs to be removed until changes have been made[.] 33rd minute: Alex says: "I think the community wants to know how much risk is [C]elsius taking when we lend out to all of these borrowers of crypto . . ." Kal answers. "the majority of our loans, almost 100 percent of them are fully [collateralized] . . ."¹⁰⁰¹

Celsius's then-Chief Marketing Officer, Vijay Konduru, responded, "Tom will take care of this. Thank you for highlighting."¹⁰⁰² Mr. Sunada-Wong then recommended generating a transcript "prior to recordings of AMA's being posted," to be "review[ed] by a variety of groups. Once each group has signed off,

¹⁰⁰⁰ Sunada-Wong, Rodney, Delete from the AMA: Direct Deposits, Email (September 17, 2021), CEL-UCC-00208054; Sunada-Wong, Rodney, AMA YouTube April 1 – Needed edits, Email (April 1, 2022), CEL-UCC-00208826 (Mr. McCarthy responds, "This means I had to cut the first 12 minutes of the AMA to remove that board and the community will ask questions.").

¹⁰⁰¹ Rodney Sunada-Wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252.

¹⁰⁰² Slack, New messages from rodney.sunada-wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252.

then the AMA would be posted. Potential groups: Marketing, Legal, Compliance, People Risk.”¹⁰⁰³

Mr. Mashinsky responded: “The essence of our LIVE AMA is that we do not work off[f] transcripts, if you want to train people as to what they can say or not say that is fine.”¹⁰⁰⁴ Mr. Sunada-Wong clarified that he was not recommending that the AMAs “work off a script,” but rather “that *after* the AMA, that the marketing team distribute a transcript of what participants said *during* the AMA, and that the recording not be posted to YouTube until after the four groups approve.”¹⁰⁰⁵ He continued: “To protect Celsius, it may be necessary to remove certain statements, which *was* the case for the April 30th AMA.”¹⁰⁰⁶ Mr. Mashinsky replied that not posting the video as soon as possible “creates more FUD” [Fear Uncertainty Doubt] . . . Going forward please post ASAP and then make the changes necessary[.]”¹⁰⁰⁷ An unedited version of the April 30th AMA that contained the statements that caused Mr. Sunada-Wong concern continue to be available on Twitter and the Internet.¹⁰⁰⁸

¹⁰⁰³ Slack, New messages from rodney.sunada-wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252.

¹⁰⁰⁴ Slack, New messages from rodney.sunada-wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252.

¹⁰⁰⁵ Slack, New messages from rodney.sunada-wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252 (emphasis in original).

¹⁰⁰⁶ Slack, New messages from rodney.sunada-wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252 (emphasis in original).

¹⁰⁰⁷ Slack, New messages from rodney.sunada-wong and Brian Strauss in Celsius, Email (July 24, 2022), CEL-UCC-00207252.

¹⁰⁰⁸ @CelsiusNetwork, Twitter (April 30, 2021). Celsius, Celsius AMA April 30, 2021, Pscp.Tv (As seen on January 15, 2023), <https://www.pscp.tv/w/1OdKrVRvWzXKX>.

Soon after this exchange, a process was put in place in which Celsius's former Head of Production and Video Producer, Tom McCarthy, created a transcript of the weekly Friday afternoon livestream and circulated it to Marketing and Risk Team by the following Monday morning. Regarding the new process, on May 14, 2021, Mr. McCarthy asked Mr. Sunada-Wong and others:

Although I recognise the need to protect ourselves going in any heavy hand[ed] editing will be noticed by the community and they will compare with the broadcast version and raise questions. Can we please set a shared and understood standard among ourselves what are major and minor infractions and what needs to be actioned on? Is there a way we can mitigate the need for edits by helping prep our guests with comms guidelines/training? I recognise my team runs media however we have not had any legal guidance or material to help shape the show . . . I would also recommend comms for Alex or the team in preparation for any questions from the community about these edits.¹⁰⁰⁹

The same day, Mr. Sunada-Wong instructed Mr. McCarthy and Bethany Davis, then Chief of Staff to Mr. Mashinsky, to delete specific statements from the May 14, 2021 AMA. Mr. Sunada-Wong wrote, "It is crucial to [] delete this section of the AMA AND [] remove the curated video explanation from EVERYPLACE on the internet," referring to the statement,

When you transfer your assets to your Celsius wallet you've instantly start[ed] generating rewards that are paid out every Monday. These rewards compound causing your returns to stack and snowball over time. Celsius is able to achieve this by lending out the community's assets to vetted financial institutions. These loans are collateralized. This means the institutions give Celsius assets or dollars to hold onto before we give out the digital assets. This protects the community and keeps them whole."¹⁰¹⁰

¹⁰⁰⁹ McCarthy, Tom, AMA Template for LIVE AMA – Friday, May 14, Email (May 14, 2021), CEL-UCC-00208957.

¹⁰¹⁰ Sunada-Wong, Rodney, AMA Template for LIVE AMA – Friday, May 14, Email (May 14, 2021), CEL-UCC-00208957.

This statement is not present in the video of the May 14, 2021 AMA that was posted on Celsius's YouTube channel as of the filing of this Report.¹⁰¹¹

The following week, the AMAs began to include a disclaimer at the end of each video:

all opinions expressed by Alex Mashinsky and other participants . . . on this website and the videos are solely such Speakers' opinions and do not reflect the opinions of Celsius . . . You should not treat any opinion expressed by Speakers as any legal, tax, or financial advice, or otherwise an inducement to make an investment or follow a particular strategy.¹⁰¹²

Celsius current and former employees told the Examiner, however, that Celsius continued to treat the AMAs as a channel to convey company information about its business operations to the public.¹⁰¹³

A few months later, as Marketing and Risk Team employees continued to monitor the AMAs for inaccurate and misleading statements and remove questionable content from the videos posted to YouTube, Mr. McCarthy sought access to data he hoped would ensure videos were factually accurate. He wrote to Celsius's then-Senior Manager of Analytics Ficht:

¹⁰¹¹ Celsius, Crypto Volatility and Elon Musk – Celsius AMA May 14th 2021, YouTube (May 14, 2021), <https://www.youtube.com/watch?v=4r4jnEgeWl8>.

¹⁰¹² Celsius, Bitcoin Miami and Upcoming Mega Deals – Celsius AMA May 28 2021, YouTube (May 28, 2021), <https://www.youtube.com/watch?v=C7d7rZUEfGo>. Celsius, Celsius AMA July 23 2021, YouTube (July 23, 2021), [https://www.youtube.com/Service Agreement](https://www.youtube.com/ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=upocw1WaTvA](https://www.youtube.com/watch?v=upocw1WaTvA); Celsius, Celsius AMA June 10 2022, YouTube (June 10, 2022), https://www.youtube.com/watch?v=GyRO_W-utXs.

¹⁰¹³ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022) (recalling discussing the need to announce Celsius's use of DeFi and investment in mining on an AMA); Examiner Interview of Oleena Mak (Senior Lifestyle & Communications Marketing Manager – Celsius, December 12, 2022) (recalling that the burn of CEL was mostly communicated through AMAs).

As we develop as a company, video's role is expanding and we need to be fact checking all live video interviews and producing all scripts and ensuring facts are correct. This is to meet legals [sic] requests on what we are out putting. To be able to do this effectively I need to have greater visibility on our data than I currently do . . . Alex is obviously getting this information from somewhere and any help in connecting me to the hive mind would be greatly appreciated.¹⁰¹⁴

Mr. Fitch responded to Mr. McCarthy that the “unfortunate reality of Celsius today is that data is scattered across so many systems and therefore we lack good standards and metrics uniformly across the company,” and promised a centralized “data warehouse” that would be completed “over the next 6 months.”¹⁰¹⁵ Mr. McCarthy wrote that he “completely underst[ood] we are still building out our infrastructure.”¹⁰¹⁶ It was not until May 2022 that Celsius's Chief Financial Officer received financial-related information intended to be presented during each AMA for his approval.¹⁰¹⁷

In the fall of 2021 and early 2022, Mr. Sunada-Wong and Mr. McCarthy, among others, continued to confer about statements during livestreams and continued to remove inaccurate and misleading statements from the posted videos. For example, on September 17, 2021, Mr. McCarthy wrote to

¹⁰¹⁴ McCarthy, Tom, Re: Connecting to the hive mind, Email, CEL_Exam-00057637. Mr. McCarthy, however, told the Examiner that he had no input into the content of the AMAs and that he was unaware of any process to confirm the accuracy of information included in AMAs, either before or after they were broadcast. Examiner Interview of Tom McCarthy (Former Head of Production – Celsius, December 15, 2022).

¹⁰¹⁵ Ficht, Gabe, Re: Connecting to the hive mind, Email (July 7, 2021), CEL_EXAM-00057637.

¹⁰¹⁶ McCarthy, Tom, Re: Connecting to the hive mind, Email (July 8, 2021), CEL_EXAM-00057637.

¹⁰¹⁷ Bolger, Rod, Fwd: URGENT!!!: May 18 YouTube AMA - Needed edits, Email (May 22, 2022), CEL-UCC-00207232.

Mr. Sunada-Wong, Mr. Cohen-Pavon, and Ms. Davis: “For this edit, do you want the whole segment removed? Or just the part until Alex talks about our business becoming more like Coinbase? It contains Alex’s clue on the letter of partner and [the] community will pick up on the edit (along with others).”¹⁰¹⁸ On December 10, 2021, Mr. Sunada-Wong wrote to Mr. McCarthy, “[P]lease remove: Alex is saying that Celsius bought out an owner who has been selling CEL tokens and therefore the sideways trading of CEL ‘is out of the way.’”¹⁰¹⁹ Three days later, Mr. McCarthy confirmed that the edit was made but that YouTube had yet to “compile the new video” so the “old version” was still posted.¹⁰²⁰ On January 28, 2022, Mr. Sunada-Wong wrote to Celsius’s then-Chief Operating Officer Denizkurdu: “. . . [B]eginning in early May, we began marshaling a variety of people to [] track exactly what was being said in the AMA [] and remove unfortunate statements”¹⁰²¹

The concern about inaccurate statements during livestreamed AMAs continued to grow amongst certain employees. In March 2022, Celsius Head of Intelligence and Credit Officer Peter Graham wrote to Mr. Sunada-Wong, “Issues are material misstatements on AMA, Twitter Spaces, potentially interviews.”¹⁰²²

¹⁰¹⁸ McCarthy, Tom, Re: Delete from the AMA: Direct Deposits, Email (September 17, 2021), CEL-UCC-00207328.

¹⁰¹⁹ Sunada-Wong, Rodney, AMA YouTube Dec 10 – needed edits, Email (December 10, 2021), CEL-UCC-00207526.

¹⁰²⁰ Sunada-Wong, Rodney, AMA YouTube Dec 10 – needed edits, Email (December 10, 2021), CEL-UCC-00207526.

¹⁰²¹ Sunada-Wong, Rodney, Communication Risk, Email (January 28, 2022), CEL-UCC-00208957.

¹⁰²² Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695.

He continued, “I believe that regulatory has underestimated the risk of these [public] forums to Celsius.”¹⁰²³ Graham added:

With respect to misrepresentations, this is defined under federal securities law as: Statements are material if reasonable investors *would consider truthful disclosure of the information significant in making their investment decisions*. Scierter is established where representation or opinions are given *without basis and in reckless disregard of their truth or falsity*.¹⁰²⁴

Mr. Graham explained in his March 15, 2022 email that Celsius “cannot edit” the Twitter Spaces. Unlike livestreamed Celsius-hosted AMAs posted to Celsius’s YouTube channel, Twitter Spaces AMAs were hosted by third parties. Mr. Graham went on to list “a selection of recent misrepresentations made by Alex and other Celsius reps on Twitter Spaces AMAs,” including:¹⁰²⁵

We Don’t Use Leverage (Alex) . . . And Celsius doesn’t have any leverage, right? I mean, we, we have a little bit of leverage, because we sometimes lend out the collateral we get from third parties. So it’s maybe again, instead of 1.0, it’s 1.2 or something like that.¹⁰²⁶

You can use rewards explorer to prove that what we give you actually came from third parties and that’s what is part of our proof of community effort to show you that Celsius does not rely on subsidies or does not kind of try to create some kind of monkey business where stuff comes from other investors.¹⁰²⁷

In the weeks that followed, Mr. Graham continued to circulate detailed lists of inaccurate and misleading statements that needed to be removed from posted

¹⁰²³ Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695.

¹⁰²⁴ Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695 (emphasis in original).

¹⁰²⁵ Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695.

¹⁰²⁶ Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695.

¹⁰²⁷ Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695.

videos to various departments, including Regulatory, Risk Team, and Marketing.¹⁰²⁸

In April 2022, Mr. Cohen-Pavon asked Mr. Sunada-Wong and others, in response to a lengthy list of statements that needed to be removed from the April 8, 2022 AMA: “Don’t you think we should have Alex on this thread? Maybe it will make him more aware of the do’s and don’ts.”¹⁰²⁹ Mr. Sunada-Wong replied:

Maybe we send an email to him and cc a very limited number of others where we say ‘FYI Alex, we removed the following items . . .’ I think this would feel more ‘private’ for Alex . . . I have at times mentioned to him in our one on one’s about avoiding certain statements e.g. don’t say we take no leverage, whereas banks are leveraged 50 times. (Last year, I provided him data that showed both banks and Celsius were ~10-20x. Fortunately, nowadays he says banks are 10-20, not 50x, but even as recently as March he said we have 1.0-1.2 leverage.).¹⁰³⁰

Mr. Cohen-Pavon agreed, adding, “I think we all agree on the necessity of fixing it and not only by editing (especially since it’s live and there are cases we are unable to edit, like twitter space and 3rd party interviews).”¹⁰³¹ Mr. Graham was tasked with creating a summary for Mr. Mashinsky of AMA statements that needed to be removed after each livestream. Mr. Graham told Mr. Sunada-Wong

¹⁰²⁸ Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (June 2, 2022), CEL-UCC-00207086.

¹⁰²⁹ Pavon, Roni, Re: AMA YouTube April 8 – Needed edits, Email (April 8, 2022), CEL-UCC-00208864.

¹⁰³⁰ Sunada-Wong, Rodney, Re: AMA YouTube April 8 – Needed edits, Email (April 8, 2022), CEL-UCC-00208864.

¹⁰³¹ Pavon, Roni, Re: AMA YouTube April 8 – Needed edits, Email (April 8, 2022), CEL-UCC-00208864.

that he “inquired to see if this could fit into the AMA prep process but from what I can tell it’s pretty unstructured and last-minute.”¹⁰³²

In April and May 2022, Mr. Graham continued to identify inaccurate statements during livestreamed AMAs that needed to be removed from the posted videos, including:

Alex states that market downturns and CEL losing value does not impact Celsius. This is not true, please remove.¹⁰³³

Alex says that almost 2mm users have earned yield with us; while we have 1.8mm registered users, my understanding is that many of these have not transferred assets and therefore would not have earned yield. Please remove.¹⁰³⁴

Alex says that it’s [business as usual] at Celsius and that we are unaffected by a downturn, this is incorrect, please remove.¹⁰³⁵

Alex insinuates that our operations are the same with [\$2 billion] assets or [\$20 billion], this is incorrect, please remove.¹⁰³⁶

Alex says that on Tuesday everyone will have swaps. Because Celsius cannot provide custody in several jurisdictions, and custody is required for swaps, we will not be providing swaps to everyone. Please remove.¹⁰³⁷

¹⁰³² Graham, Peter, Re: AMA YouTube April 8 – Needed edits, Email (April 15, 2022), CEL-UCC-00208864.

¹⁰³³ Graham, Peter, April 22 YouTube AMA – Needed edits, Email (April 22, 2022), CEL-UCC-00207932.

¹⁰³⁴ Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (May 27, 2022), CEL-UCC-00207086.

¹⁰³⁵ Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (May 27, 2022), CEL-UCC-00207086.

¹⁰³⁶ Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (May 27, 2022), CEL-UCC-00207086.

¹⁰³⁷ Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (May 27, 2022), CEL-UCC-00207086.

Zach [Wildes; Celsius's then AMA Co-Host] says that we do not have directional positions. This is untrue and misrepresents material risk factors associated with yield accounts, please remove.¹⁰³⁸

Celsius's former Risk Team employees acknowledged to the Examiner that monitoring the AMAs during the livestream and removing inaccurate and misleading content was not ideal. For example, Head of Liquidity Risk and Analytics Infrastructure Maglic said the Risk Team faced a "dilemma"—on the one hand, they "did not want inaccurate information to go out to people, so they would request things be edited out of there."¹⁰³⁹ On the other hand, Mr. Maglic said, "it would be better if [Mashinsky] didn't make the statement to begin with."¹⁰⁴⁰

Despite what Mr. Maglic described as the Risk Team's "best intentions," the Examiner found no evidence that anyone at Celsius suggested or executed on a process of correcting or retracting inaccurate and misleading statements that Celsius's employees identified and removed (or attempted to remove) between May 2021 and June 2022. Rather, the agreed-upon process was to simply remove the content from public consumption—without taking any steps to notify the livestream audience, or viewers of the posted videos before the posted videos were edited. This was so even though many of the inaccuracies and misleading statements went to the core of Celsius's business model and

¹⁰³⁸ Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (May 27, 2022), CEL-UCC-00207086.

¹⁰³⁹ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

¹⁰⁴⁰ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

financial health, and information critical to customers' understanding of the safety and success of their deposits with Celsius.

Customers cited the AMAs as very important to their perceived understanding of Celsius and their desire to deposit crypto assets with Celsius. One customer wrote to the Examiner, "If it weren't for the . . . lies Alex made on a number of [YouTube] channels I would have exited Celsius for sure."¹⁰⁴¹ Another customer wrote, "[Mashinsky] was constantly lying [sic] to customers every week via contact on YouTube and social media"¹⁰⁴² A third customer wrote to the Examiner, "I literally entrusted my life's savings with Celsius because of the public engagement and transparency offered by Mashinsky in the marketing video interviews that he regularly participated in throughout the media."¹⁰⁴³

VII. Celsius's Collapse.

Celsius's efforts to manage its business failed and ultimately led to its collapse. Celsius was able to stave off the crisis through third-party investments. Between 2018 and 2022, as a result of the ICO, preferred equity fundraising, and other investments, Celsius raised a total of approximately \$741 million.

¹⁰⁴¹ Email to Examiner (October 14, 2022).

¹⁰⁴² Email to Examiner (October 23, 2022).

¹⁰⁴³ Email to Examiner (December 8, 2022).

Equity Raise	Date	Dollar Amount Raised	Security Issued
Initial Coin Offering ¹⁰⁴⁴	March 16-23, 2018	\$32M	CEL Tokens
Series A Equity Round ¹⁰⁴⁵	May 2020 – January 2021	\$23M	~15,000 Preferred A Shares in Celsius Network (UK), sold at \$1,200/share ~6,100 Preferred A1 Shares in Celsius Network (UK), sold at \$900/share
WestCap and Caisse de dépôt et placement du Québec Investments ¹⁰⁴⁶	September – October 2021	\$150M (\$93.75M from WestCap; \$56.25M from CDPQ)	Secured Convertible Notes (later converted to Series B Preferred Shares)

¹⁰⁴⁴ Celsius's statements and records are inconsistent concerning the actual amount of ICO proceeds raised, however a letter from Celsius's counsel indicates \$32 million was raised. Sikora, John, In the Matter of Certain Digital Asset Lending Platforms, Letter (August 23, 2021), CEL-UCC-00022923, at 2. Celsius's Lender Presentation from May 2022 states that \$50 million was raised in the ICO. Celsius, Lender Presentation (May 2022), CEL-UCC-00502909. ICO data provided by Celsius to the Examiner indicates \$31.7 million was raised. Celsius's general ledger reflects \$39.7 million was received. Celsius Network Ltd. (UK) general ledger.

¹⁰⁴⁵ Celsius Network Ltd. (UK) general ledger; Sikora, John, In the Matter of Certain Digital Asset Lending Platforms, Letter (August 23, 2021), CEL-UCC-00022923; Celsius Network Ltd Cap Table, Pro Forma (June 12, 2022). The Series A Equity Round also includes crowdfunding via Bnk to the Future. Celsius Network Schedule of Bnk to the Future Capital SPC Investment Agreement: Summary & Risk, CEL- UCC-00028186; DiCamillo, Nate, What Crypto Lender Celsius Isn't Telling Its Depositors, <https://www.coindesk.com/business/2020/07/28/what-crypto-lender-celsius-isnt-telling-its-depositors/> (last accessed January 15, 2023). However, the Examiner found that figures purporting to represent the same transactions did not align.

¹⁰⁴⁶ Celsius Network Ltd. (UK) General Ledger; Lead Investor Agreement (December 3, 2021), CEL-UCC-00025606.

Equity Raise	Date	Dollar Amount Raised	Security Issued
Series B Equity Round ¹⁰⁴⁷	December 2021 – May 2022	\$536M	Series B Preferred Shares in Celsius Network (UK)
Total Raised: ~\$741 million			

However, by the end of 2022, Celsius's business model could not weather multiple headwinds, including the bear market and collapse of the Terra/Luna ecosystem, its poor NIM and high reward rates, the collapse of CEL's value, and the run on Celsius's bank by its customers, leading to a liquidity crisis and the pause in customer withdrawals.

A. Conflict Over Reward Rates.

The end of 2021 and onset of a bear market generated continuing conflict within Celsius over how to set rates and whether they were too high. In December 2021, Treasury proposed reductions in reward rates but encountered resistance due to Celsius's focus on beating competitor rates.¹⁰⁴⁸ Some, including Mr. Perman, Mr. Nolan, and Mr. Tappen, took the position that competitor rates should not matter. As Mr. Perman put it, "We are not trying to be the largest, we are trying to be the most profitable. Those 2 things don't equate. . . ." ¹⁰⁴⁹ But Mr. Sabo (Head of Research) pushed back, calling the

¹⁰⁴⁷ Celsius Network Ltd. (UK) General Ledger.

¹⁰⁴⁸ Re: Rate Suggestion, Internal Document, Email, (December 13, 2021 – December 16, 2021), CEL_EXAM_00057814.

¹⁰⁴⁹ Perman, Jason, Re: Rate Suggestion, Internal Document, Email, (December 13, 2021), CEL_EXAM_00057814 at 13.

proposed changes “too aggressive” in part due to “the competition.”¹⁰⁵⁰ Mr. Sabo concluded, “I can’t support these rates. They represent a huge shift from our current standing of being very competitive” and that “[p]eople will assume we are under stress”¹⁰⁵¹

Mr. Tappen responded:

So the solution is to continue to pay rates that we don’t actual[ly] earn because we don’t want people thinking we are not earning well when in fact that is exactly the Truth? That doesn’t seem like a correct solution either. If we cannot earn 3% on all the BTC then we cannot pay 3%. It should be as simple as that. There is no evidence that has ever supported the rates we pay and we need to move away to a model that is sustainable and actually reflects our deployments.¹⁰⁵²

The proposed rate changes were not adopted.

By January 2022, after consecutive months of negative NIM, Celsius faced a falling crypto asset market. As a result, in early January 2022, the Assets and Liabilities Committee was presented with a NIM Improvement Strategy that sought to make changes across the Celsius business model.¹⁰⁵³ These changes included:

- Renegotiating rates and collateral terms with current counterparties;
- Finalizing an engagement with a third-party asset manager;

¹⁰⁵⁰ Sabo, Ron, Re: Rate Suggestion, Internal Document, Email, (December 13, 2021), CEL_EXAM_00057814 at 12.

¹⁰⁵¹ Sabo, Ron, Re: Rate Suggestion, Internal Document, Email, (December 13, 2021), CEL_EXAM_00057814 at 5.

¹⁰⁵² Tappen, Dean, Re: Rate Suggestion, Internal Document, Email, (December 13, 2021), CEL_EXAM_00057814 at 4.

¹⁰⁵³ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-00042695 at 4.

- Creating a coin economics framework;
- Increasing allocations in deployments like DeFi and Staking; and
- Rolling out an internal hedging program.¹⁰⁵⁴

By late February, Celsius employees were beginning to comment on the situation, noting, for instance, that Celsius was “building up shorts in most crypto as [Celsius is] unable to earn what [we] pay out.”¹⁰⁵⁵ By Spring 2022, Celsius’s increasingly negative NIM became a more frequent topic of internal discussions.

Because Treasury had been unsuccessful in persuading others at Celsius to lower reward rates under the existing Reward Policy, Treasury unveiled in January 2022 a reward pricing model called “Dynamic Reward Pricing.” Treasury relied on the model to make reward recommendations to the Assets and Liabilities Committee.¹⁰⁵⁶ An Assets and Liabilities Committee document explains this process as “dynamically calculated to meet NIM targets with consideration for the amount of deployable assets, carry rates, and APY [Annual Percentage Yield] determined by coin demand.”¹⁰⁵⁷ Moreover, under this model “[r]eward pricing adjusts based on market demand where pricing is a function of

¹⁰⁵⁴ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-00042695 at 4.

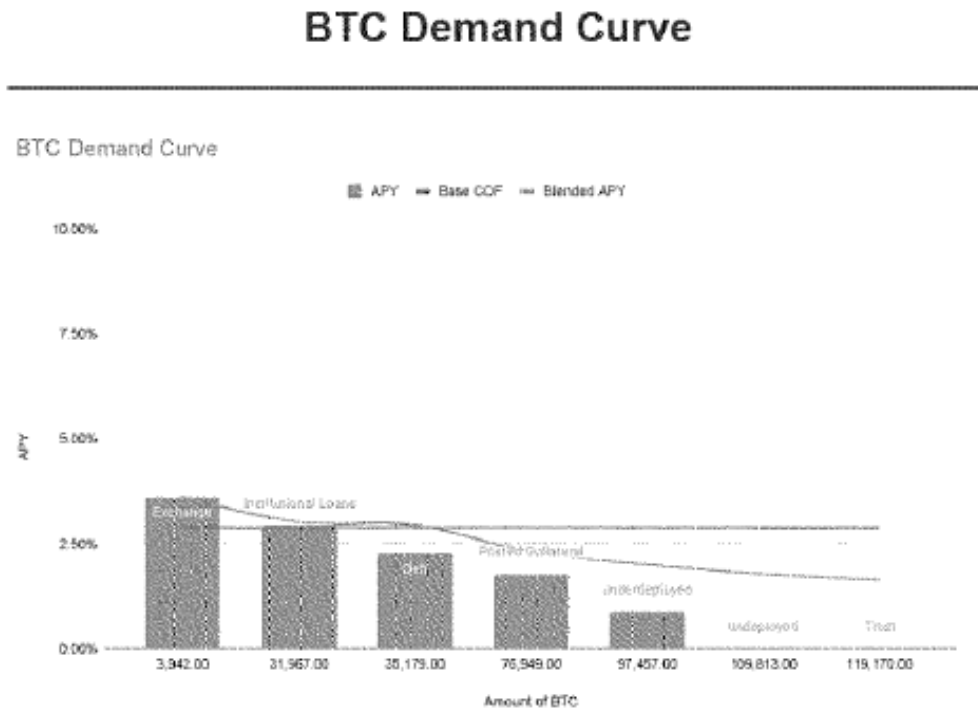
¹⁰⁵⁵ Tappen, Dean, Re: BTC and ETH net position, Email (February 22, 2022), CEL-UCC-00075804 at 1.

¹⁰⁵⁶ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-00042695 at 5.

¹⁰⁵⁷ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-00042695 at 5.

deployment APY to ensure Celsius meets return targets.”¹⁰⁵⁸ As part of this new model, Treasury created “pricing demand curves by coin to transparently illustrate how reward rates line up with current deployment yield opportunity.”¹⁰⁵⁹

An example from January 2022, depicted below, showed that “nearly every BTC deployment opportunity is below our [Cost of Funding], contributing to overall firmwide negative NIM.”¹⁰⁶⁰



¹⁰⁵⁸ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-0042695 at 5.

¹⁰⁵⁹ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-0042695 at 9.

¹⁰⁶⁰ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 5, 2022), CEL-UCC-0042695 at 9.

Treasury's vision for this new system was that for any coin Celsius approved for use on its platform, "[r]eturns will be input into the Treasury dynamic reward rate curves to compute firmwide expected [Annual Percentage Yield] after incorporating necessary reserves." Treasury then would "sync" with Marketing on Treasury's recommended rate. Treasury and Marketing would then jointly present recommended rates for the Assets and Liabilities Committee's consideration—one rate "from a purely economic perspective that will maximize NIM," and one that has a "commercial overlay in the form of additional [rewards] paid, which will also be shown as an explicit cost to firm NIM."¹⁰⁶¹

Mr. Cohen-Pavon characterized Treasury's pricing model as a significant step forward, which brought a degree of sophistication to the reward setting process. For the first time, reward rates were being informed by "profitability rather than marketing."¹⁰⁶² According to Mr. Perman, who was the primary architect of the new pricing model, Treasury's efforts to reduce Celsius's reward rates generally were not successful, at least not in full.¹⁰⁶³ For example, on February 2, 2022, Treasury recommended that Celsius set an initial reward rate for Solana (a new coin Celsius would be accepting on its platform) at 4.5%, which

¹⁰⁶¹ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 19, 2022), CEL-UCC-00042708 at 7.

¹⁰⁶² Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

¹⁰⁶³ Examiner Interview of Jason Perman (Vice President of Treasury – Celsius, November 3, 2022).

Treasury believed could result in a NIM of 1.7%.¹⁰⁶⁴ However, on February 18, 2022, Celsius announced an initial reward rate of 5.5% for Solana.

In February 2022, Rod Bolger began as Chief Financial Officer, and he worked together with Treasury to reform the reward rates process and the business model more broadly. On February 22, 2022, Mr. Perman (Vice President of Treasury) shared with Mr. Bolger a “write up that we put together to summarize the current state of our reward rates and their impacts on profitability.”¹⁰⁶⁵ This write-up, which Mr. Perman asked Mr. Bolger not to “broadly share just yet” given “sensitivity” about the issue,¹⁰⁶⁶ noted that “Celsius has taken a position that it wants to grow assets ahead of its own profitability,” that “[t]he ultimate tradeoff is between rates paid to our users / community and firm growth / profitability”¹⁰⁶⁷ and that “the only way to get to positive NIM is by reducing reward rates,” which could result in a decline in customers.¹⁰⁶⁸ The analysis noted that Celsius “currently ha[s] close to a billion dollar gap in our balance sheet that continues to grow each week as we continually add more to our liabilities than we can earn,” and Treasury recommended that Celsius “should begin to shift its strategic direction to

¹⁰⁶⁴ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 19, 2022), CEL-UCC-00042708 at 7.

¹⁰⁶⁵ CEL_EXAM-00052216.

¹⁰⁶⁶ CEL_EXAM-00052216.

¹⁰⁶⁷ CEL-UCC-00194487 at 1.

¹⁰⁶⁸ CEL-UCC-00194487 at 7.

profitability rather than being a ‘loss leader’ for the sake of customer acquisition.”¹⁰⁶⁹

Mr. Bolger, along with other recent arrivals, such as Ms. Denizkurdu as the Chief Operational Officer, agreed change was needed.¹⁰⁷⁰ Mr. Bolger perceived that “Celsius thought the bull run of 2021 made earnings easy” when in fact “it was hard because of the crypto winter.”¹⁰⁷¹ As Mr. Bolger “learned the markets,” he found they were “not as strong.”¹⁰⁷² Mr. Bolger was also surprised to learn of what he referred to as a “mismatch” between Celsius’s assets and liabilities, which was apparent when CEL was not included as an asset on the balance sheet.¹⁰⁷³ Despite his review of due diligence reports in connection with the recent equity raise, he “never saw anything about significant losses,” let alone the over \$800 million in losses he soon learned about.¹⁰⁷⁴

To Mr. Bolger, the asset-liability “mismatch” presented a “profitability issue and a funding issue that needed to be addressed.”¹⁰⁷⁵ Mr. Bolger told the

¹⁰⁶⁹ CEL-UCC-00194487 at 7-8.

¹⁰⁷⁰ CEL-UCC-00193286; CEL-UCC-00193282.

¹⁰⁷¹ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹⁰⁷² Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023); Appendix 21, Balance Sheet Summary with CEL from May 27, 2022 Freeze Report; Appendix 22, Balance Sheet Summary without CEL from May 27, 2022 Freeze Report.

¹⁰⁷³ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹⁰⁷⁴ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹⁰⁷⁵ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

Examiner that he spoke to Mr. Mashinsky weekly to “influence” him to change the business model, because “the market wasn’t just going to change overnight.”¹⁰⁷⁶ Despite these conversations, Mr. Mashinsky publicly claimed in an April 22, 2022 AMA that “what Celsius does best, better than anybody else, is go out to market and earn yield on these assets.”¹⁰⁷⁷

By the end of April, Mr. Bolger made some progress—but Mr. Mashinsky and others at Celsius did not change in their treatment of rates. Mr. Perman recalled that even as Treasury focused on economic considerations, others in Celsius’s leadership team continued to prioritize growth.¹⁰⁷⁸ For example, Mr. Perman recalled Mr. Mashinsky saying that Celsius could not cut its reward rates because of his belief that “all our customers will leave us.”¹⁰⁷⁹ Mr. Perman said that Mr. Mashinsky expressed a singular desire to grow Celsius and that Mr. Mashinsky once said, “[O]ur investors didn’t invest in us to shrink, they invested in us to double.”¹⁰⁸⁰

¹⁰⁷⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹⁰⁷⁷ Celsius, Celsius AMA April 22 2022 (Apr. 22, 2022) [https://www. Service Agreement](https://www.ServiceAgreement.com/ServiceAgreement) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [youtube.com/ Service Agreement](https://www.youtube.com/watch?v=D0izcO3XlnQ) dated December 31, 2020, Case No. 22-1139 [Dkt. 24-5]. [watch?v=D0izcO3XlnQ](https://www.youtube.com/watch?v=D0izcO3XlnQ)

¹⁰⁷⁸ Examiner Interview of Jason Perman (Vice President of Treasury – Celsius, November 3, 2022).

¹⁰⁷⁹ Examiner Interview of Jason Perman (Vice President of Treasury – Celsius, November 3, 2022).

¹⁰⁸⁰ Examiner Interview of Jason Perman (Vice President of Treasury – Celsius, November 3, 2022).

For certain smaller crypto assets, Treasury gained traction at the Assets and Liabilities Committee meetings.¹⁰⁸¹ On March 30, 2022, Treasury recommended that the reward rate for Link, an Ethereum token, be reduced from 3% to .75%. On April 7, 2022, Celsius lowered the rate to 1.75%. But Mr. Mashinsky—who had final decision-making authority over reward rates for primary coins on Celsius’s platform, like BTC, ETH, CEL, and stablecoins—generally rejected Treasury’s recommendations.¹⁰⁸² For example, on May 2, 2022, Treasury recommended that Celsius lower reward rates on stablecoins at the urging of Mr. Perman and Mr. Nolan, but the recommendation “got vetoed by Alex [Mashinsky].”¹⁰⁸³ In fact, according to historical postings on Celsius’s website, as of May 6, 2022, Celsius had increased BTC rates to 6.5% and ETH to 6%, while stablecoins stayed at 7.1%.¹⁰⁸⁴ As a result, Celsius’s overall NIM remained consistently negative, with CEL and stablecoins in particular producing a significant negative NIM.¹⁰⁸⁵

Even as Mr. Mashinsky continued to resist lowering rates, he pushed others to generate better yield on deployments. In a March 16, 2022, email to Ms. Denizkurdu, Mr. Bolger, and Mr. Cohen-Pavon, Mr. Mashinsky offered his views on “how we get to 2% positive NIM” and “generate over \$500m a year in

¹⁰⁸¹ Examiner Interview of Jason Perman (Vice President of Treasury – Celsius, November 3, 2022).

¹⁰⁸² Examiner Interview of Jason Perman (Vice President of Treasury – Celsius, November 3, 2022).

¹⁰⁸³ Tappen, Dean, Slack (May 2, 2022), CEL-UCC-00140444 at 3.

¹⁰⁸⁴ See Appendix 10.

¹⁰⁸⁵ See Appendix 10.

free cashflow.”¹⁰⁸⁶ None of Mr. Mashinsky’s suggestions involved adjusting customer rewards.¹⁰⁸⁷ By May 2022, urgency had increased. On May 1, Mr. Mashinsky noted that Celsius needed to “squeeze all areas to get to 2% positive NIM.”¹⁰⁸⁸ He suggested that Celsius stake ETH instead of FTX.¹⁰⁸⁹

Others at Celsius believed that Mr. Mashinsky’s proposal incorrectly assumed that Celsius could generate sufficient yield to achieve profitability without decreasing reward rates, despite deteriorating market conditions.¹⁰⁹⁰ For example, Mr. Tappen and Mr. Perman both told the Examiner that they did not believe that given the state of the crypto market in 2022, it was possible for Celsius to generate sufficient yield on deployment to achieve profitability while maintaining Celsius’s offered reward rates.¹⁰⁹¹ Mr. Perman expressed this concern in a March 20, 2022, email to Mr. Tappen and Mr. Bolger, stating: “It will always come down to our costs / reward rates in terms of being profitable, but no one outside this circle wants to hear that.”¹⁰⁹²

¹⁰⁸⁶ Mashinsky, Alex, How we get to 2% positive NIM, Email (March 16, 2022), CEL_EXAM-00052171.

¹⁰⁸⁷ Mashinsky, Alex, How we get to 2% positive NIM, Email (March 16, 2022), CEL_EXAM-00052171.

¹⁰⁸⁸ Mashinsky, Alex, Re: Bitfinex and FTX recap for the week Apr 22 to Apr 29, Email (May 2, 2022), CEL-UCC-00114541.

¹⁰⁸⁹ Mashinsky, Alex, Re: Bitfinex and FTX recap for the week Apr 22 to Apr 29, Email (May 2, 2022), CEL-UCC-00114541.

¹⁰⁹⁰ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

¹⁰⁹¹ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

¹⁰⁹² Jason Perman, Re: Alameda Discussion – Monday Portfolio Review, Email (March 20, 2022), CEL_EXAM-00052165 at 1.

A presentation at a Board meeting on May 2 and 3, 2022 underscored Celsius's dire financial status: Celsius had recorded 2021 pre-tax losses of \$811 million. Although Celsius's performance slightly improved in the first quarter of 2022, it still suffered steep losses of \$165 million for the quarter.¹⁰⁹³ The presentation proposed a path to profitability, suggesting that Celsius lower expenses, introduce fee income, and stop buying CEL tokens for reward payments and, instead, use Treasury balances to settle payments, among other things.¹⁰⁹⁴ With these measures, the presentation anticipated Celsius would become profitable in September 2022 (including mining) or in November 2022 (excluding mining).¹⁰⁹⁵

According to Mr. Bolger, after the May Board meeting, there was "complete buy in" from Mr. Mashinsky to charge fees, lower rates, reduce expenses, and raise capital.¹⁰⁹⁶ He recalled that Mr. Mashinsky did not want to make "drastic changes" and "lose customers," but that Mr. Mashinsky was nonetheless "on board" with the changes.¹⁰⁹⁷ Mr. Bolger believed that Celsius got "more than half way there," but "slowed down" because the company did not want to exacerbate

¹⁰⁹³ Celsius, Board Discussion May 2022, Powerpoint, (May 2, 2022) CEL-UCC-00000447.

¹⁰⁹⁴ May 2022 Board meeting presentation, CEL-UCC-00000447.

¹⁰⁹⁵ Celsius, Board Discussion May 2022, Powerpoint, (May 2, 2022) CEL-UCC-00000447.

¹⁰⁹⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹⁰⁹⁷ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

liquidity concerns by lowering rates “too much.”¹⁰⁹⁸ But any change in Mr. Mashinsky’s views came too late. Shortly thereafter, and as described further below, the Terra/Luna ecosystem collapsed and worsened Celsius’s outlook.

B. Conflict Over CEL.

CEL reward rates—what Mr. Mashinsky once said served as a barometer “of the profitability or how well is Celsius doing”¹⁰⁹⁹—proved especially difficult for Treasury to shift. Celsius made no reductions to its primary CEL reward rate between January 21, 2021 through the Petition Date.¹¹⁰⁰ In 2022, the CEL reward rate remained at 5.1%, causing losses to Celsius and contributing to a negative NIM between approximately 2.5% and 3.5%.¹¹⁰¹

In January 2022, Mr. Mashinsky’s introduced Celsius’s “CEL Team 6,” a team of six employees dedicated to improving the utility of the CEL token. These six employees drove initiatives such as Celsius X (the DeFi engineering arm of Celsius) and the push for more accredited U.S. investors to be able to earn in CEL.¹¹⁰² Internal documents, including the March 16, 2022 Assets and Liabilities Committee presentation, noted that “Treasury will be taking lead on any CEL tier & rate changes, in coordination with ‘CEL Team 6’ to ensure that

¹⁰⁹⁸ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹⁰⁹⁹ Celsius, Celsius Network AMA – Ask Mashinsky Anything! (Nov. 26, 2019).

¹¹⁰⁰ See Appendix 10.

¹¹⁰¹ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 11, 2022), CEL-UCC-00042860 at 11; Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042883 at 11.

¹¹⁰² Celsius, Celsius AMA January 14th 2022 (Jan. 14, 2022) https://www.youtube.com/watch?v=Ad3jD4e8sYc&list=PLljzjU2vvKVMNgmFM2oV79WQ0iSsqf_5oV

we are rolling out changes that are economically beneficial for our customers as well as the Firm.”¹¹⁰³

For its part, Treasury was insistent that CEL reward rates be substantially reduced, and in April 2022 complained that “[c]urrent CEL Earnings are close to 0.00% and cannot justify the current 5.1% we are paying to customers.”¹¹⁰⁴ As Mr. Perman explained:

Treasury did not agree with the banding of CEL or paying higher rates. Treasury as a function was against the whole concept . . . [W]e can’t earn any yield on CEL as an asset . . . [because of] wrong way risk. The counterparty is not willing to borrow CEL because if there’s something wrong with Celsius, there’s probably something wrong with CEL also. The risks point in the same way, which discourages investors and means no one is willing to accept CEL as collateral for loans.¹¹⁰⁵

Consequently, Treasury recommended that that the rate be reduced to 2.5%—a recommendation that was rejected.¹¹⁰⁶

In fact, throughout April and May 2022, Treasury repeatedly, and unsuccessfully, asked the Assets and Liabilities Committee to reduce CEL rewards. On May 25, 2022, in connection with an upcoming Assets & Liabilities Committee meeting, Mr. Bolger told Mr. Mashinsky that a request to reduce the CEL reward rates would be a subject of discussion at the upcoming meeting.¹¹⁰⁷

¹¹⁰³ Celsius, Asset-Liability Committee (March 16, 2022), CEL-UCC-00042775.

¹¹⁰⁴ Celsius, Asset-Liability Committee, Internal Company Document (April 13, 2022), CEL-UCC-00042816 at 8.

¹¹⁰⁵ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022).

¹¹⁰⁶ Celsius, Asset-Liability Committee, Internal Company Document (April 13, 2022), CEL-UCC-00042816 at 8; <https://web.archive.org/web/20220415142805/https://celsius.network/earn>.

¹¹⁰⁷ Bolger, Rod, Slack (May 25, 2022), CEL-UCC-00074665.

Mr. Mashinsky instructed Mr. Bolger to “follow my lead,” then dismissed the proposal to cut CEL rates because it would anger customers and cause them to withdraw from the platform.¹¹⁰⁸ Mr. Mashinsky told Mr. Bolger to “tell your team to stay in their lane.”¹¹⁰⁹ Mr. Mashinsky continued, “I don’t need help in marketing. I’m going to bring in a few billion just like I brought in the first 20B.”¹¹¹⁰ Around the same time, Mr. Perman voiced his frustration regarding rates and noted to his Celsius colleagues that “what [Mr. Mashinsky] wants goes[,] which is not the right course of action,” and that even when teams ask for Treasury’s input, the teams do not follow Treasury’s advice “because [Mr. Mashinsky] told them [not] to.”¹¹¹¹

On May 18, 2022, as Celsius dealt with decreasing liquidity and customer withdrawals, Mr. Mashinsky rejected a proposal to suspend customers’ ability to take out loans collateralized in CEL. He wrote: “[a]ny comments showing we are distancing ourselves from the CEL token will make user[s] loose [sic] trust in our business model in which CEL is a center pillar Follow my lead on all things CEL.”¹¹¹²

According to Mr. Cohen-Pavon, reducing the reward rate for CEL was a non-starter, because it went against the very nature of the flywheel, which envisioned CEL price and accompanying rewards on an ever-increasing

¹¹⁰⁸ Mashinsky, Alex, Slack (May 25, 2022), CEL-UCC-00074665.

¹¹⁰⁹ Mashinsky, Alex, Slack (May 25, 2022), CEL-UCC-00074665.

¹¹¹⁰ Mashinsky, Alex, Slack (May 25, 2022), CEL-UCC-00074665.

¹¹¹¹ Perman, Jason, Slack (May 26, 2022), CEL-UCC-00143137 at 1.

¹¹¹² Mashinsky, Alex, Email (May 18, 2022), CEL-UCC-00110135.

trajectory.¹¹¹³ Mr. Mashinsky’s focus on promoting the CEL flywheel was met with growing skepticism within Celsius. For example, in March 2022, Mr. Perman stated that the “CEL flywheel is a myth. It’s actually a negative flywheel.”¹¹¹⁴ And Chris Ferraro, then Head of Financial Planning and Analysis and Investor Relations, stated that “the fly wheel is just propaganda with out [sic] prioritization, milestones, and resources dedicated.”¹¹¹⁵

In March 2022, and as part of its effort to increase customer use of CEL, Celsius changed its reward structure to make it easier to earn significant rewards in CEL. As Mr. Perman explained, the change “essentially allow[ed] any user who earns in-CEL and holds 1 CEL (\$2) to earn a 10% bonus on their in-CEL earnings.” Before this change, Celsius required users who opted to receive their rewards in CEL to have at least 5% of their wallet balance held in CEL to qualify for a 10% bonus.¹¹¹⁶

Because Celsius did not charge for swaps, customers began to arbitrage, taking higher CEL rewards but then swapping CEL for other coins.¹¹¹⁷ Matthew Martin, former Innovation Team member, (who was “responsible for building and maintaining the Swap feature”) noted in an April 14, 2022 email that “[s]ince

¹¹¹³ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

¹¹¹⁴ CEL-UCC-002400070 at 2 (March 10, 2022).

¹¹¹⁵ CEL-UCC-00240075 at 1 (April 26, 2022).

¹¹¹⁶ CEL-UCC-00037451; CEL-UCC-00037463 at 1-2; Celsius, Asset-Liability Committee, Internal Company Document (May 11, 2022), CEL-UCC-00042860.

¹¹¹⁷ Perman, Jason, Re: CEL Tier Changes, Email (May 3, 2022), CEL-UCC-00037463 at 1.

launch [of the swap feature] CEL has been the **most sold token** on the swap feature (-7.5m) yet only 33% of customers have the ability to swap CEL.”¹¹¹⁸ In a May 2022 email, Mr. Perman alerted Mr. Bolger: “[I]f you recall some time back we brought to ALCO concerns around CEL tier changes that enabled every customer to achieve Bronze Status without holding a single CEL in their wallet. Previously you had to have at least 5% of your wallet balance in CEL to qualify as Bronze.”¹¹¹⁹ Mr. Perman continued, “it’s very obvious we’ve opened up a huge arbitrage for people to earn in CEL by holding 0 CEL and swapping back to in-kind.” And according to Celsius’s internal communications, customers who engaged in swaps took advantage of that opportunity. As of May 24, 2022, the average customer who engaged in CEL swaps swapped out 2.7 CEL tokens for every CEL token they earned since the swap feature was available.¹¹²⁰ This led one Celsius employee to conclude: “So yes, the vast majority of [swap] users are arbing us, and then some.”¹¹²¹

Mr. Perman estimated that this problem cost Celsius an additional \$6.2 million.¹¹²² Others within Celsius similarly realized that this arbitrage “broke” the flywheel because it allowed customers to escape the wheel

¹¹¹⁸ CEL_EXAM-00051933 at 2 (emphasis in original).

¹¹¹⁹ CEL-UCC-00037463.

¹¹²⁰ CEL-UCC-00112021 at 1.

¹¹²¹ CEL-UCC-00112021 at 1.

¹¹²² Perman, Jason, Re: CEL Tier Changes, Email (May 3, 2022), CEL-UCC-00037463.

altogether.¹¹²³ As a result, Celsius ended up just “recycling” CEL (re-buying the CEL it just paid out).¹¹²⁴

C. Implementing The Custody Product Added Additional Stress To Celsius’s Business.

In response to regulatory scrutiny of its Earn product, Celsius created a Custody program for unaccredited U.S. investors to hold crypto assets without earning rewards, which launched on April 15, 2022.¹¹²⁵ For months leading up to the rollout of Custody, members of Celsius’s senior leadership expressed concerns that forcibly moving users from Earn to the new Custody program would have a negative impact on Celsius’s revenue and profits. These concerns about the financial impact of the Custody program stemmed from speculation that (1) Celsius would be unable to deploy customer assets, (2) users would leave the platform once they were unable to earn interest on the assets they had deposited, and (3) developing and implementing Custody would divert resources from Celsius’s other revenue-generating activities.

For example, in late January 2022, David Ogilvy (then Head of Custody Innovation) emailed Mr. Goldstein with updates regarding “Custody First,” noting: “It is clear this is a non-trivial piece of work and the engineering team is discussing ensuring they are resourced appropriately which will mean borrowing

¹¹²³ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

¹¹²⁴ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

¹¹²⁵ Examiner’s Interim Report [Dkt. 1411].

some resources from other teams and projects.”¹¹²⁶ In March 2022, in a discussion about an unrelated technical glitch, a Celsius employee noted that “most of the resources that could deal with this are on Custody work.”¹¹²⁷

Shortly after, on April 25, 2022, Mr. Bolger emailed Mr. Nadkarni, Mr. Cohen-Pavon, and Ms. Denizkurdu asking bluntly who “own[ed]” the Custody product, noting that “Finance wasn’t brought into the roll[-]out and continues to be in the dark.”¹¹²⁸ Mr. Bolger warned of “a ton of downstream negative consequences if we don’t remedy this quickly.”¹¹²⁹ Leading up to the rollout of the Custody program, Celsius employees expressed concerns about the “percentage of active users” that would “los[e] yield” because of Custody.¹¹³⁰

Mr. Mashinsky told the Examiner that to build the Custody product within the limited time allotted, all of the company’s “best people” were assigned to Custody efforts “24/7 for six months.”¹¹³¹ Because of the personnel, time, and resources Celsius dedicated to developing Custody to comply with regulatory requirements and deadlines, Mr. Mashinsky said that “all of the other things we were supposed to do to increase revenue and decrease costs were not being

¹¹²⁶ CEL_EXAM-00011393.

¹¹²⁷ CEL-UCC-00196277.

¹¹²⁸ CEL_EXAM-00063781.

¹¹²⁹ CEL_EXAM-00063781.

¹¹³⁰ Dreyfus, Fernando, Slack (April 12, 2022), CEL-UCC-00081831 at 2. In that same discussion, an employee noted that it was “[d]ifficult to do business or understand our own business” and that the Slack thread “show[ed] a lot of different employees have detailed knowledge that hasn’t been made clear elsewhere.” *Id.*

¹¹³¹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

done.”¹¹³² Mr. Mashinsky also said that because of the time pressure, Celsius was unable to develop and implement various “features that would make money for the company and give[] incentives” to keep users on the platform.¹¹³³ Instead, according to Mr. Mashinsky, Celsius ultimately “just ran out of time” and therefore, “six months” were “stolen for the useless Custody accounts.”¹¹³⁴

Mr. Cohen-Pavon said that because of disruptions to the crypto markets he could not determine whether the implementation of the Custody program impacted Celsius’s revenue-generating activities or its assets under management.¹¹³⁵ Mr. Perman told the Examiner that he was not aware whether Celsius had formulated a plan to compensate for the disruption that would likely be caused by transitioning a large portion of Celsius’s user base from the Earn program to Custody.¹¹³⁶

D. Celsius Experienced A Severe Reduction In Liquidity.

In 2022, Celsius experienced a noticeable deterioration in its liquidity. At first, the issue was discussed in connection with the quantity of assets available for deployment. For example, between January 4 and January 14, 2022, the

¹¹³² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹¹³³ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹¹³⁴ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹¹³⁵ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, November 15, 2022).

¹¹³⁶ Examiner Interview of Jason Perman (Head of Treasury - Celsius, November 3, 2022).

amount of crypto assets available to Celsius for deployment decreased by \$1.5 billion.¹¹³⁷ Over the following two weeks (January 14 through January 31, 2022), the amount of crypto assets available for deployment declined an additional \$800 million.¹¹³⁸ In response, Celsius began taking steps to free up additional liquidity, including “post[ing] margin” with Tether and receiving back approximately \$300 million worth of BTC and ETH.¹¹³⁹

As 2022 progressed and the crypto markets continued to cool, Celsius did not have enough liquid assets (*i.e.*, assets that Celsius could obtain within seven days or less) to meet its total liabilities.¹¹⁴⁰ While it is not necessarily unusual for a financial institution to have less than 100% liquidity, Celsius’s employees recognized the company’s own liquidity situation was increasingly problematic.¹¹⁴¹ By the middle of April 2022, Celsius only had liquid assets sufficient to meet 54.5% of its total liabilities.¹¹⁴²

Between May 7 and May 9, 2022, as Celsius grappled with its struggling business, the price of the Terra stablecoin (UST) fell from its one-dollar peg to 35 cents. Its companion token, Luna, which was meant to algorithmically stabilize

¹¹³⁷ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (January 19, 2022), CEL-UCC-00042708 at 4.

¹¹³⁸ Celsius, Asset-Liability Committee, Internal Company Document (February 2, 2022), CEL-UCC-00042718 at 5.

¹¹³⁹ Celsius, Asset-Liability Committee, Internal Company Document (February 2, 2022), CEL-UCC-00042718 at 3.

¹¹⁴⁰ MLO Report (April 4, 2022), CEL-UCC-00032268.

¹¹⁴¹ Perman, Jason, Slack (May 9, 2022), CEL-UCC-00209650, at 15.

¹¹⁴² See Appendix 15.

UST's price, fell from \$80 to pennies by May 12.¹¹⁴³ As the market scrambled, Celsius moved to quickly unwind approximately \$375 million in BTC, ETH, and stablecoin deployments to ensure it had sufficient liquidity to "withstand" another significant drop in the value of its crypto assets and predicted customer withdrawals.¹¹⁴⁴ Celsius escaped with a \$30 million loss, which many—such as Mr. Strauss—considered a success story.¹¹⁴⁵ Mr. Bolger believed that Celsius had made it through "unscathed" due to "limited losses."¹¹⁴⁶ But the Terra/Luna collapse had a profound effect on Celsius given its existing liquidity position and balance sheet.¹¹⁴⁷ As of May 11, 2022, Celsius was failing its liquidity stress test and in a weakened position.¹¹⁴⁸

During this period in May 2022, the Celsius Board and top executives were aware that Celsius's "capital currently sits near zero."¹¹⁴⁹ Celsius employees began to express their concerns about the survival of the business. For example,

¹¹⁴³ Sandor, Krisztian, The Fall of Terra: A Timeline of the Meteoric Rise and Crash of UST and LUNA, CoinDesk (December 22, 2022), <https://www.coindesk.com/learn/the-fall-of-terra-a-timeline-of-the-meteoric-rise-and-crash-of-ust-and-luna/>.

¹¹⁴⁴ Assets and Liabilities Committee Meeting (May 11, 2022), CEL-UCC-00042860.

¹¹⁴⁵ Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022).

¹¹⁴⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹¹⁴⁷ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 3, 2022) ("It was around the May timeframe, the LUNA stuff, that we decided to tweak the models to make them more realistic. In early June, around when there started to be questions about solvency on Twitter, we abandoned our model altogether and shifted to a new model.").

¹¹⁴⁸ Celsius, Asset-Liability Committee, Internal Company Document (May 11, 2022), CEL-UCC-00042860, at 4.

¹¹⁴⁹ Celsius, Board Discussion, Internal Company Document (May 2, 2022), CEL-UCC-00000447.

on May 3, 2022, Mr. Martin wrote, “my level of confidence in our ability to survive is at an all-time low[.] 20% at best. Alex [Mashinsky] has no idea what he[']s doing.”¹¹⁵⁰ Rajiv Sawhney (Head of DeFi Quant and Strategy), responded: “Agreed on all fronts.”¹¹⁵¹ At that time Celsius had liquid assets to meet 52.7% of its total liabilities.¹¹⁵² On May 11, 2022, then Head of Financial Planning and Analysis and Investor Relations Chris Ferraro commented that “this is the worse [sic] performing book I’ve ever imagined . . . everything is double digit negative returns.”¹¹⁵³ Several days later, on May 16, 2022, Mr. Perman noted that Celsius had “paid more in rewards than gross rev[enues].”¹¹⁵⁴ Mr. Bolger acknowledged that Celsius would “have to pivot at some point to address rates paid,” and that Celsius would “continue to dig a deeper hole for many months.”¹¹⁵⁵

1. Terra/Luna Broke Celsius’s Stress Test Models.

Celsius called its liquidity stress test the Modeled Liquidity Outflow or “MLO,” which simulated how much each type of coin Celsius would have if Celsius experienced a 50% price decline in its coins over a 7-day period and/or a 40% price decline in a 1-day period, accompanied by a withdrawal rate of

¹¹⁵⁰ Martin, Matthew, Slack (May 3, 2022), CEL-UCC-00184853 at 4.

¹¹⁵¹ Sawhney, Rajiv, Slack (May 3, 2022), CEL-UCC-00184853 at 5.

¹¹⁵² See Appendix 15.

¹¹⁵³ Perman, Jason, Slack (May 11, 2022), CEL-UCC-00082725, at 1.

¹¹⁵⁴ Perman, Jason, Slack (May 16, 2022), CEL-UCC-00092041, at 1.

¹¹⁵⁵ Bolger, Rod, Slack (May 25, 2022), CEL-UCC-00074665.

20%.¹¹⁵⁶ In other words, the MLO was an estimate of whether Celsius had sufficient liquidity to meet expected customer withdrawals in the event of a significant decline in the value of its crypto currency holdings. Celsius's Liquidity Policy required that Celsius maintain a sufficient number of coins to meet the anticipated withdrawals projected under this model.¹¹⁵⁷ If Celsius's holdings of a crypto asset failed the MLO test, Celsius could not deploy that asset.¹¹⁵⁸

On May 11, 2022, crypto asset price declines caused Celsius to fail its MLO test, meaning that as a general matter Celsius would "not have sufficient liquidity" in the event the MLO test scenario were to occur.¹¹⁵⁹ Mr. Maglic explained that this was due in large part to the Terra/Luna collapse and its ripple effect across the crypto industry.¹¹⁶⁰

But Celsius did not prohibit further deployment, as was required under the Liquidity Risk Policy. Instead, Celsius adopted an alternative test, which modeled Celsius's liquidity in the event of a further 1-day 10% drop in asset

¹¹⁵⁶ Celsius, Asset-Liability Committee, Internal Company Document (May 11, 2022), CEL-UCC-00042860 at 4; Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

¹¹⁵⁷ Celsius Liquidity Risk Policy, Internal Company Document (January 13, 2022), CEL-UCC-00075064 at 10; Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

¹¹⁵⁸ Celsius Liquidity Risk Policy, Internal Company Document (January 13, 2022), CEL-UCC-00075064 at 10; Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

¹¹⁵⁹ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 11, 2022), CEL-UCC-00042860 at 4.

¹¹⁶⁰ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

value or a 7-day 20% drop.¹¹⁶¹ This model was described as a “more plausible scenario, that would “provide a more insight into what the liquidity needs may be given current prices.”¹¹⁶²

While Mr. Maglic did not view this turn of events as a “showstopper,”¹¹⁶³ others were not so confident. As Celsius lost customers,¹¹⁶⁴ unwound deployments, and faced decreased yields, Mr. Mashinsky proclaimed “the flywheel is turning backwards.”¹¹⁶⁵ Mr. Perman responded, “[the flywheel] was always moving in reverse.”¹¹⁶⁶ On May 16, 2022, Aslihan Denizkurdu asked Rod Bolger, “why aren’t we talking about the elephant in the room. survival? Liquidity. How many days we have left. at what price we go bust”¹¹⁶⁷

These concerns were driven in part by two primary issues. First, Celsius began to experience significant customer withdrawals—a net loss of over

¹¹⁶¹ Celsius, Asset-Liability Committee, Internal Company Document (May 11, 2022), CEL-UCC-00042860 at 4. Mr. Maglic explained that Treasury came up with this modified model because at the time Treasury did not think another 50% drop in price was “plausible.” Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022). As it turned out, the implausible soon became reality for Celsius.

¹¹⁶² Celsius, Asset-Liability Committee, Internal Company Document (May 11, 2022), CEL-UCC-00042860 at 4.

¹¹⁶³ Examiner Interview of Stevan Maglic (Head of Liquidity Risk and Analytics Infrastructure – Celsius, December 23, 2022).

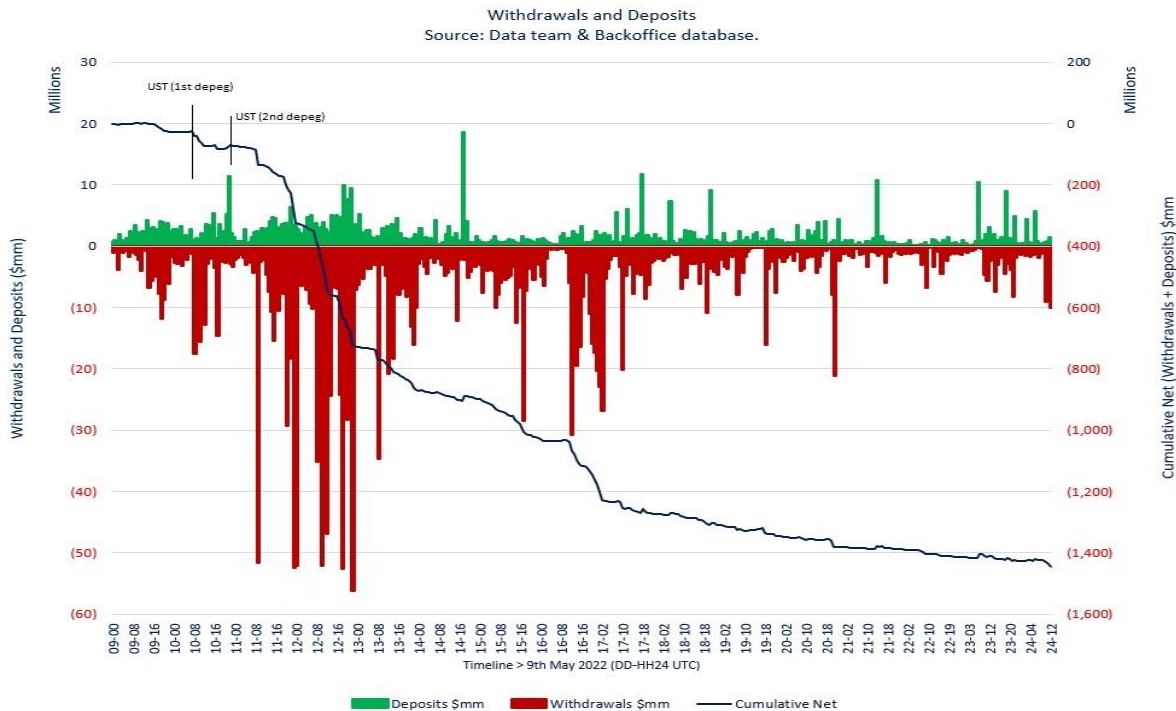
¹¹⁶⁴ Celsius, Asset-Liability Committee, Internal Company Document (May 25, 2022), CEL-UCC-00063739 at 4 (showing that Celsius experienced a net loss of over \$1.4 billion in assets off its platform between May 9, 2022 and May 24, 2022.)

¹¹⁶⁵ Mashinsky, Alex, Slack (May 5, 2022), CEL-UCC-00074656.

¹¹⁶⁶ Perman, Jason, Slack (May 5, 2022), CEL-UCC-00082712.

¹¹⁶⁷ Denizkurdu, Aslihan, Slack (May 16, 2022), CEL-UCC-00193282 at 2-3.

\$1.4 billion in assets were withdrawn from its platform between May 9 and May 24, 2022 alone.¹¹⁶⁸



Second, market conditions continued to deteriorate. On May 25, 2022, the Assets and Liabilities Committee was informed that that due to “market dislocations, client withdrawals and balance sheet composition, our liquidity position has deteriorated significantly during the week of May 9th” and from March 24, 2022 had declined by approximately \$400 million.¹¹⁶⁹ During that time period, Celsius had honored \$2.113 billion in withdrawals and received \$668 million in deposits.¹¹⁷⁰ In fact, by May 27, 2022, Celsius only had sufficient

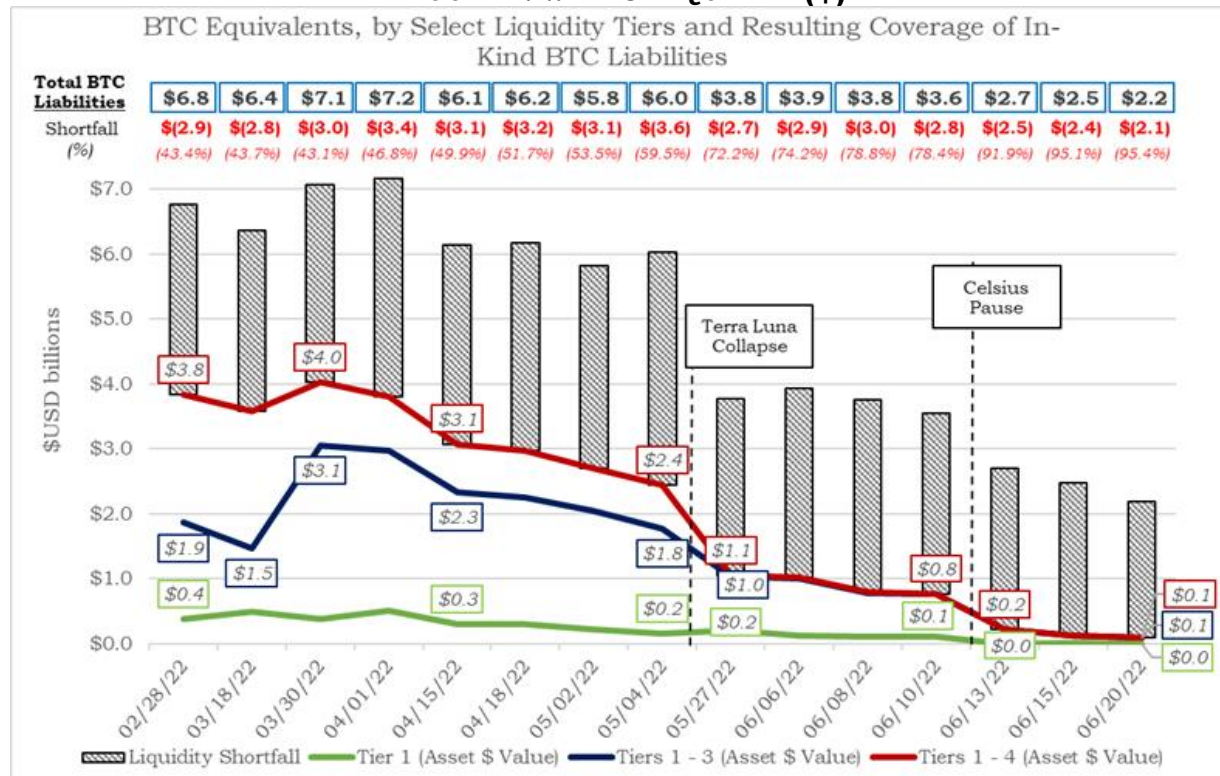
¹¹⁶⁸ Celsius, Asset-Liability Committee (May 25, 2022), CEL-UCC-00063739 at 4.

¹¹⁶⁹ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042883 at 3.

¹¹⁷⁰ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042883 at 3.

BTC liquidity to meet 27.8% of its total BTC liabilities and ETH liquidity to meet 19.5% of its total ETH liabilities.¹¹⁷¹

FIGURE 22: BTC LIQUIDITY (\$)



Note: This chart reflects all BTC and BTC Equivalents comprising Celsius AUM, measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

By that time, Celsius had triggered the modified stress test introduced only three weeks before. In reaction, Treasury modeled a new deterioration scenario (the "Moderate" scenario), which modeled a further 7-day crypto asset price decline of 30% or a 1-day decline of 15%.¹¹⁷² Treasury also ran the original stress test model (now described as the "Severe" scenario) and found that Celsius would

¹¹⁷¹ See Appendix 15.

¹¹⁷² Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042883 at 5.

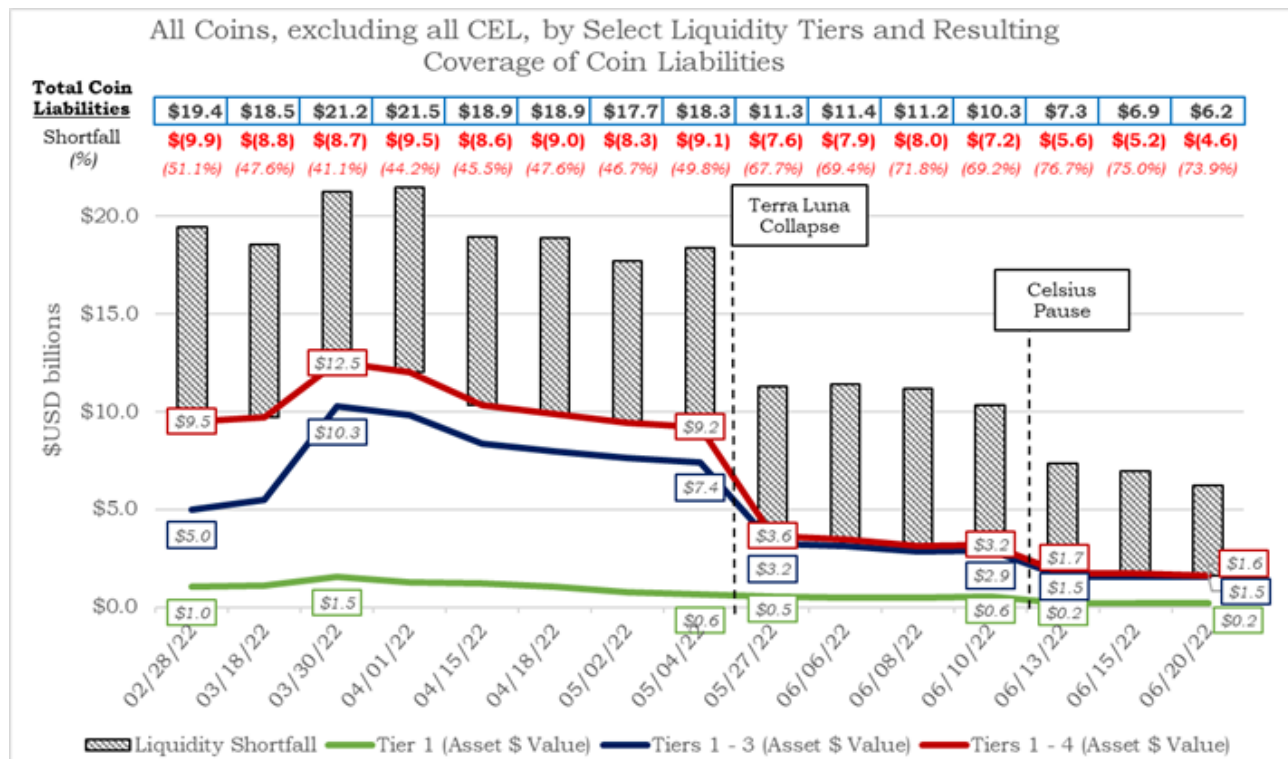
not be able to meet the anticipated customer withdrawals under either the 1-day or 7-day scenario.¹¹⁷³

In fact, Celsius could not access 60% of its crypto assets within seven days, and a significant amount of assets would require more than thirty days to unwind. These crypto assets were “either used for collateral or represent[] term retail / institutional lending and . . . represent the ‘franchise’ component of our business,” and “only a small percentage of [these] illiquid deployments can be practically unwound.”¹¹⁷⁴ As the below charts demonstrate, the percentage of Celsius’s assets that constituted “Deployable Liquidity” (*i.e.*, assets Celsius could access within 7 days) went from approximately 60% in February to under 50% by the end of May and under 35% by the Pause. In other words, a substantial majority of Celsius’s assets were essentially unavailable to meet withdrawal requests.

¹¹⁷³ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042883 at 5.

¹¹⁷⁴ Celsius, Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042875 at 8.

FIGURE 23: ALL COIN LIQUIDITY (\$)



Note: This chart reflects all coins comprising Celsius AUM (excluding CEL and custody assets) measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

Against this backdrop, Treasury developed a May 2022 presentation for Mr. Mashinsky (which Mr. Bolger delivered on May 19, 2022).¹¹⁷⁵ The presentation summarized Celsius's financial performance over the prior few months and laid out Celsius's current financial situation. Treasury concluded that "[t]he current business model is not financially sustainable."¹¹⁷⁶ Mr. Bolger

¹¹⁷⁵ Bolger, Rod, Re: Presentation shared with you: "Liquidity & Funding / Financial Update – May 2022.pptx", Email (May 19, 2022), CEL-UCC-00060455.

¹¹⁷⁶ Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

described it as an attempt to “hit [Mr. Mashinsky] over the head” and persuade him to agree to change the business.¹¹⁷⁷

The presentation identified four flaws in Celsius’s business model. The first flaw was that the Earn program had a negative 1% NIM, meaning it paid out more than it could earn deploying its assets under management.¹¹⁷⁸ In fact, according to the presentation, no business unit or coin was profitable. A second flaw was that Celsius did not charge its customers any fees.¹¹⁷⁹ The third concern was that Celsius’s new products (such as a Celsius credit card) will “not support a near-term increase in revenue.”¹¹⁸⁰ Finally, “[g]iven negative NIM and high expense base—profitability is not achieved even at 2x growth.”¹¹⁸¹ To improve Celsius’s financial performance, Mr. Bolger recommended that Celsius stop making uncollateralized institutional loans and limit or eliminate its retail loans.¹¹⁸² Treasury also recommended that there be “[n]o/limited CEL buybacks, price support, lending or burn,” a “[r]eduction in reward rates, and a “[d]e-

¹¹⁷⁷ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹¹⁷⁸ Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

¹¹⁷⁹ Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

¹¹⁸⁰ Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

¹¹⁸¹ Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

¹¹⁸² Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

risk[ing] [of] the Balance Sheet.”¹¹⁸³ In short, the recommendation was that Celsius needed to fundamentally change its approach to its business operations.

In response to the presentation, Mr. Mashinsky wrote to Mr. Bolger: “I understand that the current business model is not sustainable.”¹¹⁸⁴ But Mr. Mashinsky rejected all of the proposed recommendations, arguing, “[w]e can not fix the business by suffocating it, the recommendations are not fixing any of the problems and instead will make them worse.”¹¹⁸⁵ Instead, Mr. Mashinsky stated his belief, that “[w]hat we need is changes in the product and T&C to make all of these profitable for Celsius as we grow the community (organically at low cost of acquisition) and expand the services we offer.”¹¹⁸⁶ Mr. Bolger disagreed but understood that it would “take some time” to implement any dramatic shifts.¹¹⁸⁷

2. Celsius Continued To Present An Optimistic Financial Picture While Employees Questioned Its Survival.

On May 9, 2022, Mr. Perman described Celsius as a “sinking ship.”¹¹⁸⁸ Several days later, on May 15, 2022, Mr. Perman commented that “there is no

¹¹⁸³ Liquidity & Funding / Financial Update, Internal Company Document (May 2022), CEL-UCC-00192447 at 11.

¹¹⁸⁴ Bolger, Rod, Re: Presentation shared with you: “Liquidity & Funding / Financial Update – May 2022.pptx”, Email (May 20, 2022), CEL-UCC-00014491.

¹¹⁸⁵ Bolger, Rod, Re: Presentation shared with you: “Liquidity & Funding / Financial Update – May 2022.pptx”, Email (May 20, 2022), CEL-UCC-00014491.

¹¹⁸⁶ Bolger, Rod, Re: Presentation shared with you: “Liquidity & Funding / Financial Update – May 2022.pptx”, Email (May 20, 2022), CEL-UCC-00014491.

¹¹⁸⁷ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹¹⁸⁸ Perman, Jason, Slack (May 9, 2022), CEL-UCC-00209650 at 15.

hope” and “there is no plan.”¹¹⁸⁹ The next day, he stated his belief that Celsius’s “[business] model is fundamentally broken,”¹¹⁹⁰ and on May 26, 2022, commented “ive [sic] seen a lot – what I’ve seen here is incompetence at the highest levels.”¹¹⁹¹

Despite this, following the collapse of Terra/Luna on May 11, 2022, both Celsius and Mr. Mashinsky posted to Twitter: “As part of our responsibility to serve our community, @CelsiusNetwork implemented and abides by robust risk management frameworks to ensure the safety and security of assets on our platform. All user funds are safe. We continue to be open for business as usual.”¹¹⁹² That same day, Mr. Mashinsky posted to Twitter, “Notwithstanding the extreme market volatility, Celsius has not experienced any significant losses and all funds are safe.”¹¹⁹³ Cointelegraph¹¹⁹⁴ and the *Financial Times*¹¹⁹⁵ quoted this Tweet in the following days. On May 11, 2022, Cointelegraph also quoted Mr. Bolger as stating that, “Our top priority is to ensure that all digital assets on our platform remain safe and secure . . . Our front office teams also think and

¹¹⁸⁹ Perman, Jason, Slack (May 12, 2022), CEL-UCC-00092037 at 1-2.

¹¹⁹⁰ Perman, Jason, Slack (May 16, 2022), CEL-UCC-00092041 at 2.

¹¹⁹¹ Perman, Jason, Slack (May 26, 2022), CEL-UCC-00092106 at 2.

¹¹⁹² @CelsiusNetwork, Twitter (May 11, 2022); @Mashinsky, Twitter (May 11, 2022).

¹¹⁹³ @CelsiusNetwork, Twitter (May 11, 2022); @Mashinky, Twitter (May 11, 2022).

¹¹⁹⁴ Wright, Turner, “Binance will delist LUNA/USDT contracts as price falls below 0.005,” CoinTelegraph (May 12, 2022), <https://cointelegraph.com/news/binance-will-delist-luna-usdt-contracts-as-price-falls-below-0-005>.

¹¹⁹⁵ Shubber, Kadhim, “Crypto Lender’s Tether loan halved,” Financial Times (May 13, 2022), <https://www.ft.com/content/5eff6c38-9410-45af-94f7-2488b3a87cad>.

act like risk managers to ensure that we are not exposed in any significant way to market swings. Our liquidity position remains very strong.”¹¹⁹⁶

At the beginning of the May 13, 2022 AMA, Mr. Mashinsky said,

Celsius is stronger than ever. We have billions of dollars in liquidity. Anyone who needed to withdraw their funds, got their funds back. Anyone who wanted to come in and earn or take a loan or anything else got served. We’re open for business and we continue to do what Celsius does best: serve the community, protect the community, make sure your assets are there when you need them.¹¹⁹⁷

Celsius followed the May 13, 2022 AMA with a video post titled “Market Update from Alex Mashinsky” in which Mr. Mashinsky noted that Celsius had been working all weekend to make sure everyone got their withdrawals, loans, and swaps.¹¹⁹⁸ Mr. Mashinsky encouraged new CeFi customers, adding that “over 90% of people in the world cannot manage their own keys.”¹¹⁹⁹ He concluded by thanking the Celsius community, “the best community in crypto and we’re going to get through this together. We unite, we win. We divide, we fall.”¹²⁰⁰

¹¹⁹⁶ Wright, Turner Celsius Network execs deny rumors of significant losses amid market volatility, Cointelegraph (May 11, 2022), <https://cointelegraph.com/news/celsius-network-execs-deny-rumors-of-significant-losses-amid-market-volatility>.

¹¹⁹⁷ Celsius, Celsius AMA May 13 2022, YouTube (May 13, 2022) <https://www.youtube.com/watch?v=p1ddcMgZXEY>.

¹¹⁹⁸ Celsius, Market Update from Alex Mashinsky May 16 2022, YouTube (May 16, 2022) <https://www.youtube.com/watch?app=desktop&v=-EHWat2DLkE>.

¹¹⁹⁹ Celsius, Market Update from Alex Mashinsky May 16 2022, YouTube (May 16, 2022) <https://www.youtube.com/watch?app=desktop&v=-EHWat2DLkE>.

¹²⁰⁰ Celsius, Market Update from Alex Mashinsky May 16 2022, Youtube (May 16, 2022) <https://www.youtube.com/watch?app=desktop&v=-EHWat2DLkE>.

For some Celsius customers, the May 16, 2022 video only raised more questions. Customers asked: “Why did Celsius suspend swaps (Luna/UST) when the Community needed them the most?,” “Why are withdrawals taking hours?,” “Why was I liquidated when your customer service said my margin call would be extended?” “You always said you do whatever it takes not to liquidate Celsius.” “What happens to my invested assets should Celsius go bankrupt?”¹²⁰¹

Celsius continued to try to attract additional deposits during this period using promo codes and representations about Celsius’s liquidity. The May 17, 2022 Executive Committee materials included a continued focus on growth, asking “What are we doing to attract and grow users?”¹²⁰² On May 19, 2022, Celsius added a stablecoin promo code applicable to a minimum of \$2,500 of USDC, USDT, BUSD, GUSD, or USDP, offering \$50 of BTC as a reward, vesting after a 180-day lockup.¹²⁰³ During the May 20, 2022 Market Update, Mr. Mashinsky claimed that “no one is leaving crypto” and that while there were significant withdrawals of crypto assets “with Celsius, there’s enough liquidity.”¹²⁰⁴

¹²⁰¹ Mashinsky, Alex, Fwd: May 16 Daily Video Questions and Sentiment, Email (May 16, 2022), CEL-UCC-00107241.

¹²⁰² Celsius, Weekly Executive Committee Meeting, Internal Company Document (May 17, 2022), CEL-UCC-00182725.

¹²⁰³ Celsius, All the ways to Earn Free Crypto, Celsius (May 19, 2022), <https://web.archive.org/web/20220519184827/https://celsius.network/promo-codes>

¹²⁰⁴ Celsius, Market Update from Alex Mashinsky May 20, 2022, YouTube (May 20, 2022) <https://www.youtube.com/watch?v=GJB3GAYiq6I>

On May 23, 2022, Celsius sent a blast email to its customers promoting that its platform now supported five new coins.¹²⁰⁵ The blast email also advertised the May 19 stablecoin promotion.¹²⁰⁶ The promo codes were updated again on May 30, 2022, offering \$50 of ETH as a reward for a minimum deposit of at least \$2,500 of ETH.¹²⁰⁷

Similarly, Celsius publicly encouraged its users to increase referrals “to entice . . . or convince others to be part of this.”¹²⁰⁸ The May 27, 2022 AMA featured a promotional video regarding referral codes that stated, “Did you know you can earn crypto by referring a friend? You’ll get 50 in crypto for each completed referral. Your friend will get a \$50 referral reward too.”¹²⁰⁹ On May 29, 2022, Mr. Mashinsky offered to personally pay \$1000 to a new user that week, posting to Twitter, “These are hard times for many I will personally give one of the new @CelsiusNetwork users \$1000 this week if you show you opened an account and started #HODLing to build your #FiancialFreedom [sic]. All you need to do is be a new user, follow me and Celsius and post your referral code.”¹²¹⁰

¹²⁰⁵ Leon, Daniel, This week at Celsius: 5 new coins, stablecoin promo & what’s launching soon, Email (May 23, 2022) CEL-UCC-00108831.

¹²⁰⁶ Leon, Daniel, This week at Celsius: 5 new coins, stablecoin promo & what’s launching soon, Email (May 23, 2022) CEL-UCC-00108831.

¹²⁰⁷ Celsius, All the ways to Earn Free Crypto (May 30, 2022) <https://web.archive.org/web/20220530151907/https://celsius.network/promo-codes>

¹²⁰⁸ Celsius, Celsius AMA June 3 2022, YouTube (June 3, 2022) <https://www.youtube.com/watch?v=9zAVFmiyDhE>.

¹²⁰⁹ Celsius, Celsius AMA May 27 2022, YouTube (May 27, 2022) <https://www.youtube.com/watch?v=MFboVGyOX2I>

¹²¹⁰ @Mashinsky, Twitter (May 29, 2022).

E. CEL Collapsed.

In the end, CEL could not be supported indefinitely and CEL—the “backbone” of Celsius—broke.¹²¹¹ By May 12, 2022, the price of CEL had fallen to \$0.57, causing one employee to comment that the token was “legit being wiped out.”¹²¹² Celsius, however, continued to pour resources into the token and minutes later those efforts led to a temporary increase in the price to \$0.90. Mr. Perman took this as “proof we are the only buyers.”¹²¹³

Later that day, the issue of CEL buybacks came to a head when Mr. Mashinsky directed the purchase of \$5 million worth of CEL. At the time, Celsius only had \$1.6 million in the stablecoin needed for Celsius to make the purchase. Mr. Mashinsky asked Mr. Bolger to make the call about further purchases of CEL.¹²¹⁴ Mr. Bolger declined, saying “[w]e can’t prop up CEL at this point. Unfortunately don’t have that luxury.”¹²¹⁵ And while intermittent CEL buying continued, May 12, 2022 marked the end of Celsius’s sustained efforts to support the trading price of CEL. At the end of the day on May 12, 2022, CEL traded at \$0.98. That price had dropped to \$0.28 on the date of the Pause.¹²¹⁶

¹²¹¹ Whitepaper, Celsius, <https://celsius.network/static/celsius-whitepaper.pdf> (last visited January 29, 2023).

¹²¹² Perman, Jason, Slack (May 12, 2022), CEL-UCC-00140473 at 4-5.

¹²¹³ Perman, Jason, Slack (May 12, 2022), CEL-UCC-00140473 at 4.

¹²¹⁴ Bolger, Rod, Slack (May 12, 2022), CEL-UCC-00193404 at 2.

¹²¹⁵ Bolger, Rod, Slack (May 12, 2022), CEL-UCC-00193404 at 2.

¹²¹⁶ Celsius, <https://coinmarketcap.com/currencies/celsius/historical-data/> (last visited January 29, 2023); CoinMarketCap, (last visited January 29, 2023).

Celsius's efforts to prevent the collapse of its token were costly. By the end of May 2022, Celsius had spent over \$50 million purchasing CEL,¹²¹⁷ which Mr. Bolger was calling by that point in time a "dead token."¹²¹⁸ Over the entirety of Celsius's existence, it spent over \$350 million buying its own token on the market.¹²¹⁹ Moreover, Celsius's inability to deploy CEL for revenue generation resulted in a persistent negative NIM on CEL.¹²²⁰ In examining why Celsius expended so much on CEL, Mr. Martin came to a similar conclusion that Ms. Urata-Thomson had almost two years earlier: "we spent all our cash paying execs and trying to prop up alexs [*sic*] net worth in CEL token."¹²²¹

1. Celsius Was Unable To Operate The Flywheel And Used Customer Funds To Purchase CEL.

The fundamental principle of the flywheel was that customers would know Celsius was a successful business because Celsius was using its profits to purchase CEL. The theory was that a higher price of CEL reflected Celsius's continued and growing financial success. Mr. Mashinsky told the Examiner that while Celsius could buy CEL with other crypto assets, it would do so only with the yield generated from other deployments because Celsius was "not allowed to touch customer assets [the principal the customer put on the Celsius platform]

¹²¹⁷ Perman, Jason, Slack (May 26, 2022), CEL-UCC-00092106 at 3.

¹²¹⁸ Perman, Jason, Slack (May 26, 2022), CEL-UCC-00092106 at 3. Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023) (discussing Mashinsky's singular focus on growth).

¹²¹⁹ Arkham Report on the Celsius Network (July 7, 2022), CEL_EXAM-00076203 at 14.

¹²²⁰ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

¹²²¹ Martin, Matthew, Slack (May 3, 2022), CEL-UCC-00184853 at 7.

to buy CEL from the market.” He added, “I’m not supposed to use customer assets. I should have enough on the balance sheet.”¹²²²

But Celsius did not follow that rule because it did not earn enough yield on its deployments to cover the full cost of its CEL purchasing activities. It therefore needed customer deposits to fund those buybacks. As early as August 2020, Celsius’s managers suspected that this rule was being broken. For example, in August 2020, Ms. Urata-Thompson stated that prior to Celsius’s 2020 equity raise, she was “nervous” about CEL purchases because “technically we were using customer money right?” given that Celsius was “in deficit . . . and we will remain [in] deficit for probably like a year to come.”¹²²³

Ms. Urata-Thompson’s concerns were confirmed several months later. According to Mr. Tappen, Celsius learned of a significant coin shortage in BTC and ETH (the two coins that at the time were used to buy back CEL) in early 2021 while Celsius was putting together its first Freeze Report.¹²²⁴ He also said that shorts in other crypto assets were discovered at this time.¹²²⁵ Mr. Tappen identified the source of all of these shortages, at least in part, as the CEL

¹²²² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹²²³ Urata-Thompson, Harumi, Slack (August 5, 2020), CEL-UCC-00277814 at 3.

¹²²⁴ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

¹²²⁵ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

buybacks.¹²²⁶ Mr. Nolan also identified CEL buybacks (along with Celsius's reward rates) as the two primary drivers behind this shortfall.¹²²⁷

In response to the coin shortage, Celsius had to go to the market and use stablecoin to procure enough BTC and ETH to try to cover the shortage.¹²²⁸ Mr. Tappen stated that the cost of acquiring the BTC alone was between \$200 and \$300 million.¹²²⁹ On January 19, 2021, Mr. Tappen stated in an internal communication that his title at Celsius should be "Ponzi Consultant."¹²³⁰ Mr. Tappen told the Examiner that he made this "poor joke" during a late-night conversation, and that he had no concerns that Celsius was operating as a *Ponzi* scheme.¹²³¹

Following the discovery that Celsius's secondary market purchases of CEL had in part caused a shortfall of BTC and ETH, an internal Celsius memorandum from March 6, 2021 advised:

While it is necessary for Celsius to buy CEL to pay interest, the expectation is that we are using revenues 'in kind' on each coin and then use that

¹²²⁶ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023). Mr. Tappen noted that shorts in other crypto currencies were discovered during this process as well.

¹²²⁷ Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023).

¹²²⁸ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023).

¹²²⁹ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

¹²³⁰ Tappen, Dean, Slack (January 19, 2021), CEL-UCC-00236467.

¹²³¹ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023). Mr. Tappen told the Examiner that his understanding of a *Ponzi* scheme is "a promise of exceptionally high rewards while deploying funds in a fraudulent manner."

revenue to purchase CEL. However, this is not what we were doing. We used BTC and ETH to buy CEL token for all CEL purchase operations and did not repurchase the BTC and ETH. This caused us to be short BTC and ETH almost exactly the same value of what we paid to buy CEL. **SAID MORE BLUNTLY, CELSIUS USED CUSTOMER FUND[S] TO BUY CEL TOKEN.**¹²³²

Celsius began using stablecoin to acquire the BTC/ETH needed for CEL buybacks (and later used stablecoin directly to make those purchases).¹²³³ At the time, Celsius purchased such a significant amount of BTC and ETH (over 1,500 BTC and 25,000 ETH) that at least one employee raised concerns that the buybacks contradicted Celsius's statements to customers "that we earn yield and then pay 80% back to them" and concluded, "this does not look good."¹²³⁴

But Celsius neglected the underlying cause of the issue—that Celsius was not generating enough revenue to support its CEL buybacks. In effect, Celsius exchanged a coin shortfall in BTC and ETH for a coin shortfall in stablecoin.¹²³⁵ As Mr. Nolan stated and as the Freeze Report reflects, from at least May 2021 through May 2022, Celsius had a "persistent"¹²³⁶ stablecoin shortfall in the hundreds of millions of dollars and on several occasions a coin shortfall of over \$2 billion.¹²³⁷

¹²³² Celsius, Internal Company Document (March 6, 2021), CEL_EXAM-00088466 (emphasis in the original).

¹²³³ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

¹²³⁴ Walls, Chad, Slack (March 11, 2021), CEL-UCC-00236812 at 1.

¹²³⁵ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

¹²³⁶ Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023).

¹²³⁷ See Appendix 15.

On April 29, 2022, Mr. Tappen described Celsius's practice of "using customer stable coins" and "growing short in customer coins" to buy CEL as "very ponzi like."¹²³⁸ A few weeks later, when Celsius was making another push to prop up the price of CEL, Mr. Perman wondered "with what cash" Celsius was using to support the token.¹²³⁹ Mr. Tappen responded "users like always."¹²⁴⁰ When asked about this comment, Mr. Tappen told the Examiner that he was referring to the fact that at that time, Celsius had a "negative equity position," and given that "anything that you are using funds on is user funds, [Celsius] won't be using the company money because there is no company money if you have negative equity."¹²⁴¹

F. The Pause.

Only weeks after the Terra/Luna collapse, Celsius customers appeared to lose faith that Celsius had sufficient funds to cover deposits. Withdrawals increased rapidly, leading to a run on Celsius in early June 2022. Between June 10 and 12, 2022, Celsius received \$428.3 million in withdrawal requests.¹²⁴² By that time, Celsius's liquidity had run out and on June 11, 2022, Mr. Perman noted "there isnt [sic] even enough liq[uid] to meet withdraws."¹²⁴³

¹²³⁸ Tappen, Dean, Slack (April 29, 2022), CEL_EXAM-00171749 at 2.

¹²³⁹ Perman, Jason, Slack (May 12, 2022), CEL-UCC-00140473 at 4.

¹²⁴⁰ Perman, Jason, Slack (May 12, 2022), CEL-UCC-00140473 at 5.

¹²⁴¹ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

¹²⁴² Celsius, SOFA3_2yr compiled excel files (October 27, 2022).

¹²⁴³ Perman, Jason, Slack (June 11, 2022), CEL-UCC-00092072 at 2.

The next day, Celsius announced that it was pausing all customer withdrawals.¹²⁴⁴

1. Early June Interview And Tweets.

In the lead up to the Pause, Mr. Mashinsky and others within Celsius continued to advise customers that Celsius was financially healthy and a good investment. On June 1, 2022, in an interview promoted on the Celsius Twitter account, Mr. Mashinsky spoke with InvestAnswers.¹²⁴⁵ When asked, “are our funds safe at Celsius?” Mr. Mashinsky said, “not just that they are safe but we provided anyone who wanted to withdraw partially or fully, there were no problems . . . I know people are concerned about the whole market . . . about the terra luna situation. That’s the service, you can withdraw at any time . . . We have billions of dollars of liquidity.”¹²⁴⁶

During the June 3, 2022 AMA, Mr. Mashinsky encouraged viewers to use the promo and referral codes emailed to customers in May, explaining “The bigger we are the more leverage, the more pressure, we have on these other guys to pay us yield and to pay us uh for these assets.”¹²⁴⁷ He closed the AMA by

¹²⁴⁴ Celsius, A Memo to the Celsius Community, Blog (June 12, 2022) <https://celsiusnetwork.medium.com/a-memo-to-the-celsius-community-59532a06ecc6>.

¹²⁴⁵ @CelsiusNetwork, Twitter (June 1, 2022).

¹²⁴⁶ Crypto Archives, InvestAnswers interviews Alex Mashinsky, CEO of Celsius Live streamed June 1, 2022 (Dec. 13, 2022), <https://m.youtube.com/watch?v=lpXHwWyJhTo>.

¹²⁴⁷ Celsius, Celsius AMA June 3 2022 (June 3, 2022), <https://www.youtube.com/watch?v=9zAVFmiyDhE>.

repeating, “Follow, share, use your promo codes, use your referral codes. Let's make this community the biggest and best community in crypto.”¹²⁴⁸

2. June 5, 2022 Public Report Of Loss Of Keys For 35,000 ETH Via Stakehound.

Following the weeks of volatility after the collapse of Luna in May 2022, on June 5, 2022, the first public report of Celsius’s loss of ETH in Stakehound was reported in the news.¹²⁴⁹ The reports noted that Celsius had detected the loss in May 2021, but Celsius had not notified customers of the loss prior to June 2022.¹²⁵⁰ The article was the subject of a post on the Celsius Reddit, which was “removed by the moderators of r/CelsiusNetwork.”¹²⁵¹

3. June 6, 2022.

On June 6, 2022, Mr. Perman confided in then-Head of Financial Planning and Analysis and Investor Relations Ferraro that “If we see more flight of coins we could be in trouble.”¹²⁵²

¹²⁴⁸ Celsius, Celsius AMA June 3 2022 (June 3, 2022), <https://www.youtube.com/watch?v=9zAVFmiyDhE>.

¹²⁴⁹ Celsius Network lost at least 35,000 Ether in Stakehound key blunder, Dirty Bubble Media (June 5, 2022), <https://dirtybubblemedia.substack.com/p/celsius-network-lost-at-least-35000> (last visited January 29, 2023); Mohan Raj, Paigambar, Celsius Network Loses Keys to 35K Ethereum Tokens in Stakehound, Watcher.guru (June 6, 2022), <https://watcher.guru/news/celsius-network-loses-keys-to-35k-ethereum-tokens-in-stakehound> (last visited January 29, 2023).

¹²⁵⁰ Celsius Network Lost at Least 35,000 \$ETH in Stakehound Key Blunder, TokenINsight (June 7, 2022), <https://tokeninsight.com/en/news/celsius-network-lost-at-least-35-000-eth-in-stakehound-key-blunder> (last visited January 29, 2023).

¹²⁵¹ Celsius Network lost at least 35,000 Ether in Stakehound key blunder, Reddit (June 5, 2022), https://www.reddit.com/r/CelsiusNetwork/comments/v6ygoa/celsius_network_lost_at_least_35000_ether_in/ (last visited January 29, 2023).

¹²⁵² Perman, Jason, Slack (June 6, 2022), CEL-UCC-00082699 at 2.

Celsius's Head of Strategic Communications, Jackie Rubin, asked Mr. Perman to review a proposed reply to an inquiry from Bloomberg concerning ETH and Stakehound. The proposed reply stated, "Celsius holds more than enough ETH to meet both present and future obligations, as dictated by our comprehensive liquidity risk management framework. Both our liquidity risk management framework and world class security infrastructure are the backbone of our company."¹²⁵³ Mr. Perman sent the language to Mr. Tappen for his review separately in a Slack. Mr. Tappen responded, "the more than enough ETH statement is tough . . . I think we cannot come out with a statement saying we have enough ETH while unwinding the position."¹²⁵⁴ Mr. Perman responded that "we do have more than enough ETH. Its just in stETH form." Mr. Tappen said, "LOL . . . but they are not the same thing."¹²⁵⁵ Mr. Perman approved the statement to Bloomberg.¹²⁵⁶

4. June 7, 2022.

On the morning of June 7, 2022, a WhatsApp user, "Patrick," sent Mr. Mashinsky several Twitter posts, including one that asserted that "Celsius \$CEL is functionally insolvent on their ETH position."¹²⁵⁷ "Patrick" noted that there is a "[f]air bit of fud [fear, uncertainty, and doubt] circling around," and

¹²⁵³ Rubin, Jackie, Re: URGENT, Email (June 6, 2022) provided to the Examiner via email on January 29, 2023.

¹²⁵⁴ Tappen, Dean, Slack (June 6, 2022), CEL-UCC-00209673.

¹²⁵⁵ Tappen, Dean, Slack (June 6, 2022), CEL-UCC-00209673.

¹²⁵⁶ Rubin, Jackie, Re: URGENT, Email (June 6, 2022) provided to the Examiner via email on January 29, 2023.

¹²⁵⁷ Mashinsky, Alex, Whatsapp message (June 7, 2022), CEL-UCC-00074652.

asked Mr. Mashinsky if he wanted to respond.¹²⁵⁸ Celsius attempted to take down at least one article that discussed the June 5 Stakehound story and reported that “Celsius [N]etwork may have run into liquidity issues. They may be insolvent on their ETH position” as a result of the Stakehound loss.¹²⁵⁹

That same day, on June 7, 2022, Celsius published a post on its blog, titled “Damn the Torpedoes, Full Speed Ahead.”¹²⁶⁰ The post acknowledged that “the entire crypto community has faced a challenging time” and that “[e]verywhere crypto is held, hard-working people around the globe are constantly checking their accounts”¹²⁶¹ but asserted that “Celsius has one of the best risk management teams in the world. Our security team and infrastructure is second to none. We have made it through crypto downturns before (this is our fourth!). Celsius is prepared.”¹²⁶² Celsius wanted to “be clear” that it “continues to process withdrawals without delay” and that Celsius had “not had any issues meeting withdrawal requests.”¹²⁶³ The post specifically addressed concerns

¹²⁵⁸ Mashinsky, Alex, Whatsapp message (June 7, 2022), CEL-UCC-00074652.

¹²⁵⁹ Lemmens, Camile, “Will Celsius Not Be Able to Honor Redemptions?” <https://www.altcoinbuzz.io/cryptocurrency-news/will-celsius-not-be-able-to-honor-redemptions/> (last visited Dec. 15, 2022); Mashinsky, Alex, Slack (June 7, 2022) (CEL-UCC-00074670).

¹²⁶⁰ Celsius, “Damn the Torpedoes, Full Speed Ahead,” (June 7, 2022), <https://celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af>.

¹²⁶¹ Celsius, “Damn the Torpedoes, Full Speed Ahead,” (June 7, 2022), <https://celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af>.

¹²⁶² Celsius, “Damn the Torpedoes, Full Speed Ahead,” (June 7, 2022), <https://celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af>.

¹²⁶³ Celsius, “Damn the Torpedoes, Full Speed Ahead,” (June 7, 2022), <https://celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af>.

about ETH, stating in bold that “Celsius has the reserves (and more than enough ETH) to meet obligations, as dictated by our comprehensive liquidity risk management framework.”¹²⁶⁴

Mr. Mashinsky told the Examiner that the idea behind the “Damn the Torpedoes, Full Speed Ahead” post was to “tell people what you’re reading is not true, we are in business and keep doing what we are doing.”¹²⁶⁵ Mr. Mashinsky added, “This was kind of like the Lehman moment” and “an irreversible situation” had been “created.”¹²⁶⁶

5. June 8, 2022.

On June 8, 2022, the day after Celsius’s “Damn the Torpedoes, Full Speed Ahead” blog post, Celsius published another blog post, underscoring some of the same themes and introducing Mr. Bolger to the community.¹²⁶⁷ The post quoted Mr. Bolger describing what stood out to him about Celsius was “The company’s strong liquidity framework, established practices around liquidity data, and modeling.”¹²⁶⁸ He explained that Celsius identified instability related to Luna and

¹²⁶⁴ Celsius, “Damn the Torpedoes, Full Speed Ahead,” (June 7, 2022), <https://celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af>.

¹²⁶⁵ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹²⁶⁶ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹²⁶⁷ Celsius, “Get to Know Rod Bolger, Chief Financial Officer, Celsius, (June 8, 2022) <https://celsiusnetwork.medium.com/get-to-know-rod-bolger-chief-financial-officer-celsius-9c60718f205d>

¹²⁶⁸ Celsius, “Get to Know Rod Bolger, Chief Financial Officer, Celsius, (June 8, 2022) <https://celsiusnetwork.medium.com/get-to-know-rod-bolger-chief-financial-officer-celsius-9c60718f205d>.

“acted swiftly to protect our customers,” noting that “[w]e built a world-class risk management team for precisely this reason.”¹²⁶⁹

An internal document cited this and the prior day’s blog posts as “Example ‘win’ pieces.”¹²⁷⁰ Two customers cited these blog posts to the Examiner as reasons that they did not withdraw their crypto assets from the Celsius platform, despite the swirling rumors in early June.¹²⁷¹

While Mr. Bolger extolled Celsius’s “strong liquidity framework,” Celsius employees noted that liquidity was running out and that Celsius had “unwound a lot” of its available liquidity, including stablecoins.¹²⁷² At the same time these discussions were occurring, Mr. Mashinsky asked Mr. Sabo to raise the ETH reward rates “so we can be more competitive on the marketing side.”¹²⁷³

6. June 9, 2022.

On June 9, 2022, the Risk Committee met amid an increase in customer withdrawals over the last two weeks.¹²⁷⁴ At that meeting, Mr. Sunada-Wong asked to see “how the liquidity situations would be impacted by an increase in coin prices” and “about current withdrawal rates relative to the amount of

¹²⁶⁹ Celsius, “Get to Know Rod Bolger, Chief Financial Officer, Celsius, (June 8, 2022) <https://celciusnetwork.medium.com/get-to-know-rod-bolger-chief-financial-officer-celsius-9c60718f205d>.

¹²⁷⁰ Celsius, Project Chrysalis Update – Investor Version – June 8th (June 8, 2022) CEL-UCC-00096627.

¹²⁷¹ Examiner Interview of Customers (December 12, 2022, December 15, 2022).

¹²⁷² Tappen, Dean, Slack (June 8, 2022), CEL-UCC-00209686 at 2.

¹²⁷³ Tappen, Dean, Slack (June 8, 2022), CEL-UCC-00209686 at 3.

¹²⁷⁴ CEL-UCC-00042630 at 3.

remaining liquidity.”¹²⁷⁵ That same day, Mr. Tang and Mr. Perman discussed the future of Celsius and how Celsius found itself in its precarious financial condition.¹²⁷⁶ Mr. Perman summed up his explanation for Celsius’s current financial situation as follows: “Pay unsustainable yields so you can grow AUM, forcing you to take on more risk, experience losses bc of those risks + bad controls / judgment and you are where you are.”¹²⁷⁷

7. June 10-12, 2022.

On the morning of June 10, 2022, a Twitter account posted a lengthy thread that asserted that Celsius had meaningful exposure to staked ETH, which had depegged from ETH at a ratio of .95:1 that week.¹²⁷⁸ Later that day, Celsius held its regular Friday AMA. During this June 10, 2022 AMA, Celsius repeated certain of Celsius’s core themes including transparency, liquidity, and the ability to withdraw at any time.¹²⁷⁹ The AMA included a prerecorded video of Mr. Bolger discussing the importance of transparency.¹²⁸⁰ Celsius’s Head of Production McCarthy suggested the creation of this video package “to help soothe our

¹²⁷⁵ CEL-UCC-00042630 at 3.

¹²⁷⁶ Perman, Jason, Slack (June 9, 2022), CEL-UCC-00491222 at 3.

¹²⁷⁷ Perman, Jason, Slack (June 9, 2022), CEL-UCC-00491222 at 3.

¹²⁷⁸ @Crypto_Joe10, Twitter (June 10, 2022).

¹²⁷⁹ Celsius, Celsius AMA June 10, 2022, YouTube (June 10, 2022) https://www.youtube.com/watch?v=GyRO_W-utXs

¹²⁸⁰ Celsius, Celsius AMA June 10, 2022, YouTube (June 10, 2022) https://www.youtube.com/watch?v=GyRO_W-utXs

community and reduce the FUD and noise currently out there in the market,” describing it as “high priority.”¹²⁸¹ In the video, Mr. Bolger stated,

we believe in transparency; the blockchain is about transparency . . . We have voluntarily disclosed a lot of financial information. My goal, even before we’re regulated and or public and required to do so, is to continue building out the tools that are baseline . . . and have us report transparently as if we’re a public company.¹²⁸²

In the same AMA, Mr. Mashinsky told customers that “Celsius has billions in liquidity, we provide immediate access to anyone who needs access to the liquidity. That includes institutions that includes people who want to get their coins back.”¹²⁸³ Mr. Mashinsky repeated later in the AMA,

when you went through several bear markets you know what to do right, you need to have liquidity, which we have . . . Again, that’s why anyone who wants to withdraw has no problem right. I know people who just withdraw to make sure they can withdraw and then they put it back in you know like so fine no problem you if you need to test. Go ahead, just again, don’t believe uh people who are not customers. They’re not.¹²⁸⁴

While Mr. Bolger was publicly projecting confidence, in private he was having conversations on the role CEL was playing in Celsius’s demise.¹²⁸⁵ In his words, “When it bleeds we bleed withdrawals. Damn Catch-22.”¹²⁸⁶ That same

¹²⁸¹ McCarthy, Tom, Record time with Rod, Email (June 10, 2022) CEL-UCC-00007183; Examiner Interview of Tom McCarthy (Celsius Head of Production – December 15, 2022).

¹²⁸² Celsius, Celsius AMA June 10, 2022, Youtube (June 10, 2022), https://www.youtube.com/watch?v=GyRO_W-utXs at 9:45.

¹²⁸³ Celsius, Celsius AMA June 10, 2022, Youtube (June 10, 2022), https://www.youtube.com/watch?v=GyRO_W-utXs at 9:06.

¹²⁸⁴ Celsius, Celsius AMA June 10, 2022, Youtube (June 10, 2022), https://www.youtube.com/watch?v=GyRO_W-utXs.

¹²⁸⁵ Bolger, Rod, Slack (June 10, 20220), CEL-UCC-00194485.

¹²⁸⁶ Bolger, Rod, Slack (June 10, 20220), CEL-UCC-00194485.

day, Mr. Sawhney commented to Mr. Bolger that “Cel is acting like our firm’s equity . . . They see Cel [as] a proxy for the health of the firm.”¹²⁸⁷ The next day, on June 11, 2022, Mr. Mashinsky posted to Twitter, “do you know even one person who has a problem withdrawing from Celsius? Why spread FUD and misinformation.”¹²⁸⁸

Yet Celsius had already recognized a need for a capital injection and was in search of a “strategic and capital partner to fortify its balance sheet.”¹²⁸⁹ Celsius approached multiple big players in the crypto industry,¹²⁹⁰ including Binance, Tether, and FTX.¹²⁹¹ Mr. Mashinsky also recalled reaching out to Galaxy.¹²⁹² On the morning of June 12, 2022, Mr. Bolger exchanged emails with WestCap about a potential presentation to FTX.¹²⁹³ Celsius had engaged the investment bankers and WestCap to secure immediate capital funding to instill

¹²⁸⁷ Sawhney, Rajiv, Slack (June 10, 2022), CEL-UCC-00194107 at 3. Mr. Perman expressed his frustration on this issue less than two weeks prior when he shared his belief that while there was no actual “correlation” between the financial health of Celsius and the price of CEL, one of the issues Celsius was facing was that “Alex doesn’t want people to know that” Perman, Jason, Slack (May 27, 2022), CEL-UCC-00212066 at 3. Mr. Nolan agreed, calling Mr. Mashinsky’s approach, a “self fulfilling prophecy” Nolan, Connor, Slack (May 27, 2022), CEL-UCC-00212066 at 3.

¹²⁸⁸ @Mashinsky, Twitter (June 11, 2022).

¹²⁸⁹ CEL-UCC-00085776.

¹²⁹⁰ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹¹ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹²⁹³ Goodman, Alex, Celsius Material, Email (June 12, 2022), CEL-UCC-00107258.

confidence in the market and improve Celsius's financial position.¹²⁹⁴ Mr. Bolger did not recall how much capital was requested but estimated that Celsius needed approximately \$1 to \$2 billion.¹²⁹⁵ Mr. Bolger also thought that a complete takeover could have been appropriate.¹²⁹⁶

While Mr. Bolger understood that Mr. Mashinsky would have been happy with any appropriate counterparty.¹²⁹⁷ Mr. Bolger said that Mr. Mashinsky was aware of the outreach to FTX.¹²⁹⁸ Mr. Mashinsky told the Examiner that he did not trust FTX, and that he "did not want to sell," but was open to "all ideas."¹²⁹⁹ Regardless of who the strategic partner would be, Mr. Bolger recalled a consensus at the Board level that something needed to happen.¹³⁰⁰

Celsius's representatives met with Sam Bankman-Fried, Caroline Ellison, and the FTX team on June 12.¹³⁰¹ Mr. Mashinsky told the Examiner that he was

¹²⁹⁴ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹⁵ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹⁷ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹⁸ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹²⁹⁹ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹³⁰⁰ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹³⁰¹ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023); Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023); CEL-UCC-00107258.

not aware of the meeting at the time it occurred.¹³⁰² The Celsius team spoke to FTX about Celsius's operations and financial positioning as well as their thoughts regarding where Celsius was headed.¹³⁰³ Mr. Bolger recalled that the FTX team "drilled into" Celsius's balance sheet.¹³⁰⁴ A follow up meeting with Mr. Bankman-Fried was scheduled, but the meeting never took place.¹³⁰⁵ Ultimately, no deal was finalized.¹³⁰⁶

On the evening of June 12, 2022, Celsius paused all withdrawals, transfers, and swaps.¹³⁰⁷ One of the motivating factors, according to Mr. Bolger, was the balance sheet "mismatch," which reduced available liquidity.¹³⁰⁸ That same day, Mr. Tappen commented that "all our financials" should be "take[n] with a grain of salt."¹³⁰⁹

¹³⁰² Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹³⁰³ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹³⁰⁴ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹³⁰⁵ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹³⁰⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹³⁰⁷ Celsius, A Memo to the Celsius Community (June 12, 2022) <https://celsiusnetwork.medium.com/a-memo-to-the-celsius-community-59532a06ecc6>

¹³⁰⁸ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

¹³⁰⁹ Tappen, Dean, Slack (June 12, 2022), CEL-UCC-0008271.

G. Customer Retail Loan Liquidations.

Following the Pause, some retail loan holders suffered liquidations, as they were unable to move crypto assets within the platform or were unwilling to deposit additional crypto assets into a platform that had paused withdrawals.¹³¹⁰ These liquidations occurred despite Celsius's promises that it would work with customers to meet margin calls and that liquidation was the last resort.¹³¹¹ Mr. Blonstein stated during his deposition that he understood that the position of the loan holders was an "almost impossible catch-22."¹³¹²

Customers told the Examiner of inconsistent treatment of margin calls after the Pause. One customer relayed to the Examiner how he reached out to Celsius and Mr. Mashinsky around the Pause, trying to avoid liquidation of a significant loan to no avail.¹³¹³ Another customer described having a loan

¹³¹⁰ Examiner Interview of Customer (December 8 and 9, 2022); Bentov, Tal, Re: [Celsius Network] Re: Re: [Celsius] Action required – Resolve Margin Call for Loan #90300, Email (June 15, 2022) CEL-UCC-0012285 (noting "Already got liquidated on loans despite being communicative" while thanking a Celsius employee for padding up collateral on another loan); Bentov, Tal, Re: [Celsius Network] Re: Refinance – DocuSign Sent, Email (June 15, 2022) CEL-UCC-00123413 ("My loan has been liquidated already. Celsius paused the transactions, So I wouldn't be able to add collateral or close the loan . I have been communicating with you to resolve the margin loan via other channels , and I assumed you have paused the liquidation process; considering the fact that Celsius transactions are paused, why liquidation transactions are still going ahead?").

¹³¹¹ Celsius, Money for Your Honey, Loans Q&A – Celsius AMA (February 5, 2021) (Feb. 5, 2021) <https://www.youtube.com/watch?v=2wqD78AnFaw&t=3230s> ("We don't want to liquidate, this is the worst thing, we hate it."); @NukeGold (Feb. 24, 2021) ("We give every tool and opportunity to the user to avoid liquidation. We liquidate as a very last resort."); @NukeGold (April 23, 2021) ("@CelsiusNetwork is the only company in the industry that is fighting hard NOT to liquidate its customers."); Celsius, Celsius AMA December 10, 2021 (Dec. 10, 2021) <https://www.youtube.com/watch?v=X304U3isWzg>; Celsius, Sprint Training / Celsius User (November 15, 2021) CEL-UCC-00106886 ("the liquidation of a loan is a last resort.").

¹³¹² Deposition of Oren Blonstein (Nov. 22, 2022), 416:17-417:7.

¹³¹³ Examiner Interview of Customer (December 8, 2022).

liquidated almost immediately after the Pause was announced but was able to work with the loan team to avoid liquidation of another loan the next day.¹³¹⁴

H. As Celsius Was Collapsing, Celsius Employees Began Removing Crypto Assets From The Celsius Platform.

Mr. Mashinsky was the largest individual holder of CEL.¹³¹⁵ From 2018 through the Petition Date, Celsius's top managers made significant amounts of money selling CEL. Mr. Mashinsky either directly sold or swapped at least 25.1 million CEL for at least \$68.7 million. Mr. Goldstein either directly sold or swapped at least 2.5 million CEL for at least \$2.8 million and Mr. Leon directly sold or swapped at least 2.6 million CEL for at least \$9.74 million.¹³¹⁶ During the AMAs, Mr. Mashinsky made repeated assertions that he was not a seller of CEL, despite regularly selling CEL.¹³¹⁷

¹³¹⁴ Examiner Interview of Customer (December 9, 2022).

¹³¹⁵ Celsius, Top 500 HODLers, <https://celsius.network/top500> (last visited Dec. 10, 2022).

¹³¹⁶ See Appendix 7, Summary of A. Mashinsky CEL Token Activity (On-Chain), Summary of N. Goldstein CEL Token Activity (On-Chain), and Summary of D. Leon CEL Token Activity (On-Chain). The Examiner identified transfers out of the accounts of these three insiders but could not determine the nature of the transfers and so did not include these amounts in the above totals: 6 million CEL (\$1.65 million) for Mr. Mashinsky; 12.36 million CEL (\$4.7 million) for Mr. Goldstein; and 73,000 CEL (\$141,000) for Mr. Leon.

¹³¹⁷ @Mashinsky, Twitter (December 9, 2021) ("All @CelsiusNetwork founders have made purchases of #CEL and are not sellers of the token @sdanielleon and @NukeGold believe in the value of CEL and still hold the vast majority of their tokens 4 years after launch other projects already dumped on their community in first year"); See, e.g., Celsius, Celsius Network AMA – Ask Mashinsky Anything! (November 26, 2019) <https://www.youtube.com/watch?v=H1n5g7uJyvQ>; Celsius, Celsius AMA October 1st 2021 (Oct. 1, 2021) <https://www.youtube.com/watch?v=mUokZbnfFyE>; Celsius, Celsius AMA January 7th 2022 (January 7, 2022) <https://www.youtube.com/watch?v=6631ORa2v4M>.

In the November 5, 2021 AMA, Mr. Mashinsky addressed “rumors” that he had sold CEL in recent weeks, stating that he had actually bought “something like 30,000 CEL token last few days. If you think I’m selling, I’m not selling, I’m buying” but that it did not matter as “you have to make your own decisions.”¹³¹⁸ While Mr. Mashinsky did receive 29,000 CEL tokens on November 4, 2021, he also sold approximately 344,000 CEL tokens during the prior month, October 2021.¹³¹⁹ In December 2021, Mr. Mashinsky sold approximately 37,000 CEL for \$156,000.¹³²⁰

On December 9, 2021, Mr. Mashinsky posted to Twitter, “All @CelsiusNetwork founders have made purchases of #CEL and are not sellers of the token.”¹³²¹ He similarly asserted in an AMA and on Twitter that he made more purchases of CEL on January 7, 2022.¹³²² The prior day, he directed his Twitter followers to “see latest research by @CelHero on founders wallets buy and sell”¹³²³ and quote-tweeted @CelHero, “Latest founder CEL holdings update over past two weeks @Mashinsky primary account was 39.8m CEL, which should be 39.9m today with interest. He's just 411 CEL shy of that, so we'll just say he

¹³¹⁸ Celsius, Celsius AMA November 5th 2021 (November 5, 2021) <https://www.youtube.com/watch?v=t-4DzujwruI>.

¹³¹⁹ Huron Analysis of CEL token activity (<https://etherscan.io/token/0xaaaeb6fe48e54f431b0c390cfaf0b017d09d42d>).

¹³²⁰ See Appendix 7.

¹³²¹ @Mashinsky, Twitter (December 9, 2021).

¹³²² Celsius, Celsius AMA January 7th 2022 (Jan. 7, 2022) <https://www.youtube.com/watch?v=6631ORa2v4M>

¹³²³ @Mashinsky, Twitter (January 6, 2022).

didn't sell.”¹³²⁴ But in December 2021, Mr. Mashinsky sold approximately 37,000 CEL for \$156,000.00 and in January 2022, Mr. Mashinsky sold approximately 22,000 CEL for \$90,000.¹³²⁵

In mid-May 2022, following the collapse of Terra/Luna, schedules filed by Celsius reflect that Mr. Mashinsky withdrew assets from the platform.¹³²⁶ Mr. Mashinsky told the Examiner that in May 2022, he was the largest creditor of Celsius, and “by definition, I didn’t withdraw.”¹³²⁷

Internal documents reflect that Celsius purchased CEL from top employees in exchange for millions of dollars. In an April 13, 2022 Slack channel discussion between Mr. Tappen and Mr. Ferraro, Mr. Tappen wrote, “we have paid USD out to top employees totaling \$40,154,760.87 due to CEL buybacks . . . top employees being Alex, Daniel, nuke, etc”¹³²⁸ Mr. Ferraro clarified, “so we pay in CEL then we buy back what they sell?”¹³²⁹ Mr. Tappen agreed, “Correct we let them sell it back to us via the OTC desk.”¹³³⁰ Mr. Tappen noted that “if anyone ever found out our position and how much founders took in USD could

¹³²⁴ @Mashinsky, Twitter (January 6, 2022).

¹³²⁵ See Appendix 31.

¹³²⁶ Global Notes and Statement of Limitations, Methodology, and Disclaimers Regarding the Debtors’ Schedules of Assets and Liabilities and Statements of Financial Affairs (October 6, 2022) Dkt. 973.

¹³²⁷ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

¹³²⁸ Celsius, Slack between Tappen, Dean and Ferraro, Chris (April 13, 2022), CEL-UCC-0008309.

¹³²⁹ Celsius, Slack between Tappen, Dean and Ferraro, Chris (April 13, 2022), CEL-UCC-0008309.

¹³³⁰ Celsius, Slack between Tappen, Dean and Ferraro, Chris (April 13, 2022), CEL-UCC-0008309.

be a very very bad look . . . We are using users USDC to pay for employees worthless CEL . . . All because the company is the one inflating the price to get the valuations to be able to sell back to the company.”¹³³¹

VIII. Celsius’s Inability To Meet Customer Liabilities.

Celsius persistently struggled to pay the rewards it promised to its customers. Celsius’s net revenue exceeded reward obligations to customers by approximately \$34 million from 2018 through 2020.¹³³² But Celsius’s reward obligations to customers in 2021 (\$582 million) exceeded net revenue by approximately \$1 billion in 2021 (net revenue was negative \$433 million before rewards), and by \$380 million in the first half of 2022.¹³³³ Cumulatively, from 2018 through June 30, 2022, Celsius accrued reward obligations to customers of \$1.36 billion more than the net revenue it generated from customer deposits.¹³³⁴

Compounding this problem, as detailed above, Celsius bought CEL on the open market to pay rewards, but could not then deploy that CEL to earn yield

¹³³¹ Celsius, Slack between Tappen, Dean and Ferraro, Chris (April 13, 2022), CEL-UCC-0008309.

¹³³² See Appendix 11, Analysis of Cryptocurrency Revenue and Rewards. Including Series A and B equity raises, the cumulative net surplus in 2018, 2019, and 2020 increases to approximately \$46 million. Appendix 20, Analysis of Cryptocurrency Revenue and Rewards (Plus Series A & B Equity).

¹³³³ See Appendix 11, Analysis of Cryptocurrency Revenue and Rewards. Including Series A and B equity raises, the net deficits in 2021 and in the first half of 2022 decrease to \$425 million and \$284 million respectively. Appendix 20, Analysis of Cryptocurrency Revenue and Rewards (Plus Series A & B Equity).

¹³³⁴ See Appendix 11, Analysis of Cryptocurrency Revenue and Rewards. Including Series A and B equity raises, this cumulative deficit was \$663 million. Appendix 20, Analysis of Cryptocurrency Revenue and Rewards (Plus Series A & B Equity).

because there was no market to do so. In addition, Celsius recognized significant losses in 2021 and 2022 on deployments dating back to at least 2019. Collectively, these contributed to what Celsius calculated in May 2022 to be over \$1.7 billion in total losses.¹³³⁵

A. The Billion-Dollar Hole.

Celsius's problems did not start in 2022. Rather, serious problems dated back to at least 2020, after Celsius started using customer assets to fund operational expenses and rewards. To fund operations, Celsius posted customer deposits as collateral to take out loans in stablecoin.¹³³⁶ And to fund CEL buybacks for rewards, Celsius exchanged BTC and ETH for CEL on the secondary market.¹³³⁷ But prior to the creation of the Freeze Report, Celsius did not adequately track or reconcile customer assets and liabilities on a coin-by-coin basis.¹³³⁸ Celsius was therefore caught off guard when, in early 2021, it recognized a shortfall in BTC and ETH (which it had been using to fund those CEL buybacks).¹³³⁹ Because the shortfall was in volatile, rapidly-appreciating

¹³³⁵ Celsius, April 2022 Outlook, Powerpoint, (June 23, 2022) CEL-UCC-00242264 at 6.

¹³³⁶ Celsius took stablecoin loans from Equities First, collateralized by BTC and ETH, to support retail lending, fund operating expenses (OpEx) and for other purposes. *See* Part Two, Section IV.B. Deposition of Chris Ferraro (November 21, 2022) at 95-97; 96:17-23. As of December 11, 2020, 13.7% of total assets under management were posted as collateral for stablecoin loans from Equities First and QCP Capital. CEL-UCC-00040827, at 6.

¹³³⁷ Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023).

¹³³⁸ Mashinsky, Alex, Re: Risk Committee Meeting Notes, Email (February 10, 2021), CEL_EXAM-00057355; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Celsius, Postmortem – Lessons Learned_13 (March 5, 2021), CEL_EXAM-00088466.

¹³³⁹ Celsius, Postmortem – Lessons Learned_13 (March 5, 2021), CEL_EXAM-00088466.

crypto assets, it created directional risk. In other words, even if the number of BTC and ETH coins needed to bridge the gap did not change, the liability measured in dollars could grow exponentially, into the hundreds of millions of dollars.¹³⁴⁰

As described in Part Two, Section VIII.E, Celsius scrambled to bridge that gap by buying BTC and ETH, largely using stablecoins.¹³⁴¹ But to do so, Celsius used other customer deposits.¹³⁴² Thus, while Celsius was able to stem the dollar-value increases in the shortfall, these actions did not fill the underlying coin deficit.

Mr. Perman noted that it would be a “cardinal sin” for Celsius to use customer deposits in one coin to cover shortfalls in another and doing so was “not allowed” while he was at Treasury.¹³⁴³ But Celsius employees told one another that “using [customer funds] as collateral is diff[erent] than outright selling.”¹³⁴⁴ That is, as Mr. Perman explained, while Celsius recognized that it

¹³⁴⁰ Urata-Thompson, Harumi, What we earn vs what we spend – failure in accounting and risk mgm, Email (March 7, 2021), CEL_EXAM-00167647; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023); Celsius, Postmortem – Lessons Learned_13 (March 5, 2021), CEL_EXAM-00088466.

¹³⁴¹ Deposition of Chris Ferraro (November 21, 2022), at 95-97; 96:17-23; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, January 17, 2023); Examiner Interview of Connor Nolan (Head of Institutional Lending – Celsius, January 12, 2023); Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, December 29, 2022).

¹³⁴² Celsius, Postmortem Analysis, PowerPoint Presentation, (February 11, 2022), CEL-UCC-00073959.

¹³⁴³ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, January 11, 2023).

¹³⁴⁴ Perman, Jason, Slack (April 29, 2022), CEL_EXAM-00171749.

should not use customer assets to purchase the coins necessary to cover liabilities to other customers, it could use customer assets to borrow other crypto assets used to cover a shortfall.¹³⁴⁵ So, Celsius shifted the hole in its balance sheet from more volatile crypto assets to stablecoins by also using those assets to borrow (rather than outright buy) stablecoins.¹³⁴⁶

Slack messages between Mr. Ferraro and Mr. Sunada-Wong explained that negative NIM, large investment losses, and lack of other funding “forced Celsius to post user coins as collateral to borrow stablecoins.”¹³⁴⁷ Mr. Ferraro acknowledged that Celsius used its stablecoin holdings “to buy back coins that were actual losses” and that the amount of those purchases “was in [the] range” of \$300 million.¹³⁴⁸ He also confirmed that Celsius used stablecoin as its primary means of funding general business operations (estimated at \$500 million) and “the entire mining asset”¹³⁴⁹ (estimated at \$600 million), among other things.¹³⁵⁰

In 2019 and 2020, Celsius had taken stablecoin loans from Equities First, collateralized by BTC and ETH.¹³⁵¹ In 2021, Celsius shifted to borrowing primarily from Tether and from DeFi platforms Compound, Aave, and Maker. By

¹³⁴⁵ Perman, Jason, Slack (April 29, 2022), CEL_EXAM-00171749. The Examiner notes that while borrowing does not fill the hole in the balance sheet, it can avoid one of the cross-currency risks of an asset-liability mismatch.

¹³⁴⁶ Deposition of Chris Ferraro (November 21, 2022) at 95-97; 96:17-23.

¹³⁴⁷ CEL_EXAM-00172985.

¹³⁴⁸ Deposition of Chris Ferraro (November 21, 2022) at 95-97; 96:17-23.

¹³⁴⁹ Deposition of Chris Ferraro (November 21, 2022) at 95:22-23.

¹³⁵⁰ Deposition of Chris Ferraro (November 21, 2022) at 95:12-15.

¹³⁵¹ See Part Two, IV.B.

May 13, 2021, in addition to the 2019 and 2020 Equities First loans, Celsius had borrowed \$1.823 billion of the stablecoin USDT from Tether, posting as collateral \$2.612 billion of its assets under management (17% of all assets).¹³⁵² By July 8, 2021, the Tether loan had dropped to just over \$1 billion in USDT, but DeFi borrowing increased.¹³⁵³ The loan balances continued to grow into the Fall, and by October 5, 2021 Celsius had outstanding borrowing of \$1.51 billion USDT from Tether, as well as significantly larger DeFi borrowings for which Celsius had posted collateral with a value of more than \$2.35 billion in excess of what it had received.¹³⁵⁴

During 2021, Celsius learned that it could not recover its BTC and ETH collateral from Equities First.¹³⁵⁵ As a result of that and other losses, as BTC and ETH prices rose, Celsius continued to purchase additional BTC and ETH to fill a growing gap in those coins, again using stablecoins (which it had borrowed).¹³⁵⁶ The stablecoin deficit reflected on the Freeze Report grew dramatically in 2021, crossing the \$1 billion threshold by July and the \$2 billion threshold in August.

¹³⁵² Coin Stats Worksheet from Freeze Report May 21, 2021; CEL-UCC-00040910, at 8.

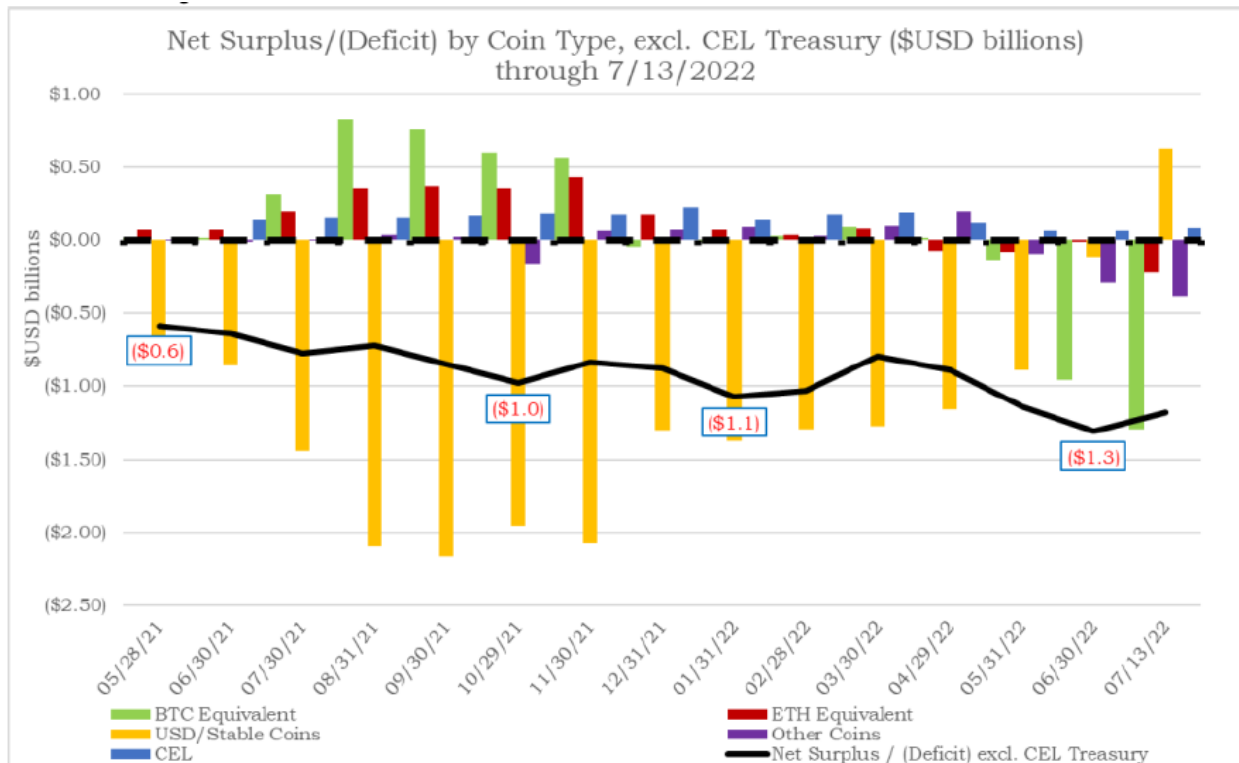
¹³⁵³ Celsius, Risk Committee Meeting (Part II) (May 14, 2021), CEL-UCC-00040910, at 5, 10.

¹³⁵⁴ CEL-UCC-00041354, at 5, 12.

¹³⁵⁵ *See supra*, Section VII.B.2.

¹³⁵⁶ Deposition of Chris Ferraro (November 21, 2022) at 95-97; 96:17-23.

FIGURE 24: NET COIN SURPLUS/(DEFICIT) MAY 2021 TO PETITION DATE



Note: This chart reflects the net surplus or deficit in all coins (total AUM) categorized by coin type, from May 2021 through the Petition Date.

As Celsius later summarized in the chart set forth below, it used the stablecoins it borrowed to address losses, expenses, and reward buybacks of approximately \$1.7 billion, including \$375 million in CEL buybacks, of which \$75 million went to employees.¹³⁵⁷ After accounting for Series A and B equity raised in 2021 and 2022 of approximately \$700 million, Celsius calculated its net stablecoin deficit to be \$1 billion:¹³⁵⁸

¹³⁵⁷ Celsius, April 2022 Outlook, Powerpoint, (June 23, 2022) CEL-UCC-00242264 at 6.

¹³⁵⁸ Celsius, April 2022 Outlook, Powerpoint, (June 23, 2022) CEL-UCC-00242264 at 6.

Stable Coin - Sources & Uses

Cel Buying / lack of Hedge	\$300,000,000.00
KeyFi	\$350,000,000.00
Badger	\$50,000,000.00
CEFI Losses	\$45,000,000.00
Negative NIM	\$100,000,000.00
Employee CEL Buyback	\$75,000,000.00
Gas	\$50,000,000.00
Other	\$50,000,000.00
EFH	\$450,000,000.00
Greyscale	\$150,000,000.00
Stakehound	\$50,000,000.00
sum	\$1,670,000,000.00

- ☐ Total cumulative losses or ~\$1.7B
- ☐ Series A & B raised ~\$700mm
- ☐ Net stable coin position of \$1B

Celsius sought to attract additional stablecoin from its customers through the use of promo codes and rewards rates. For example, on October 8, 2021, Mr. Mashinsky stated:

The reason we have to go and borrow USDT is because we don't have enough stable coins from our community right now. When we borrow USDT we pay them yield. So instead of paying you that yield, we're paying them yield because we don't have enough coins from you. Now every day of the week we rather pay you that yield right every day of the week right and I personally put more stable coins into Celsius just to provide even more liquidity right to earn that eight point eight percent yield . . . again I urge everybody who has access [to] stable coins to put it to work and help us with that.¹³⁵⁹

Celsius also utilized promo codes targeting stablecoins beginning on November 12, 2021, offering up to \$500 worth of BTC in exchange for deposits of a minimum of \$50 of USDC or USDT.¹³⁶⁰ On November 25, 2021, Celsius

¹³⁵⁹ Celsius, Celsius AMA October 8th 2021, YouTube (October 8, 2021) <https://www.youtube.com/watch?v=UPOEPVJdcFk>.

¹³⁶⁰ Celsius, Promo Codes, (November 12, 2021) <https://web.archive.org/web/20211112152818/https://celsius.network/promo-codes>

raised its reward rate for stablecoin, including USDC and USDT, from 8.88% to 10.02%.¹³⁶¹

By December 8, 2021, an Assets and Liabilities Committee presentation reported that 27.88% of the total assets under management, over \$6.7 billion, were posted as collateral and earning effectively zero yield.¹³⁶² This meant that 27.88% of Celsius's crypto assets were encumbered and unavailable, except to the extent that Celsius could deliver stablecoins to unlock its collateral. But Celsius did not have the stablecoins to do so, as reflected in the persistent deficit in stablecoins of \$1 billion or more.

As noted above, Celsius shifted the source of its borrowings over time (first borrowing from Equities First, then expanding to Tether, and DeFi protocols). In early 2022, Celsius reduced its Tether exposure, but substantially increased its exposure to FTX by maintaining assets on the FTX platform and borrowing stablecoins from FTX.¹³⁶³ As of April 25, 2022, Celsius's internal reports indicate

¹³⁶¹ See Appendix 10, Chart of Rate Changes (compare November 7, 2021 to November 25, 2021).

¹³⁶² CEL-UCC-00042908, at 4. As of December 14, 2021, Celsius was borrowing \$1.419 billion USDT from Tether, with \$2 billion in crypto posted as collateral, along with Defi borrowing exposure of \$1.466 billion. CEL-UCC-00042288, at 19.

¹³⁶³ In January 2022, Mr. Mashinsky traveled to the Bahamas, where he met with FTX and Alameda Research representatives, including Sam Bankman-Fried and Caroline Ellison. He told the Examiner that he came away distrustful of FTX and sought to unwind any exposure to the FTX platform. Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023). But Mr. Strauss recalled that Mr. Mashinsky came back and wanted to double down on FTX and the Risk Team had to persuade him not to proceed. Examiner Interview of Brian Strauss (Former Chief Credit Officer – Celsius, December 20, 2022). CEL_EXAM-00121536 (Mr. Mashinsky wrote to Mr. van Etten: “Alameda wants to borrow USDT on 6-12 month terms up to \$2B so work with Risk to see how far we can go I met their CEO Caroline yesterday in Bahamas.”).

it had borrowed \$1.514 billion in stablecoins from FTX and had over \$2.5 billion in assets on the platform.¹³⁶⁴

A March 2022 Assets and Liabilities Committee materials explained that Celsius “us[es] stablecoins to fund coin purchases to backfill the excess liability position” in those coins.¹³⁶⁵ A May 11, 2022 presentation, depicted below, summarized the total sources and uses of Celsius’s stablecoin borrowing. Celsius had \$4.6 billion of stablecoin liabilities, including customer deposit liabilities of approximately \$1.9 billion, and Institutional, DeFi, and exchange loans of \$2.5 billion.¹³⁶⁶ Some of that \$4.6 billion was productively deployed in loans to retail customers, but another \$630 million had gone to the mining business, and over \$1 billion had been spent to fund the losses referred to as “A-L [asset-liability] mis-match” (*i.e.*, the hole in its balance sheet).¹³⁶⁷

¹³⁶⁴ CEL-UCC-0042288.

¹³⁶⁵ Celsius, Weekly Executive Committee Materials, Powerpoint (March 29, 2022) CEL-UCC-00276060 at 18.

¹³⁶⁶ CEL-UCC-000428860, at 15.

¹³⁶⁷ CEL-UCC-000428860, at 15.



Stablecoin Sources & Uses

- Stablecoin Sources & Uses provides a comprehensive overview of our spot Stablecoin funding vs. deployments
- \$4.6bn of Stablecoin Funding vs. \$4.5bn of Stablecoin Uses (\$1bn funding the A-L mismatch) with \$104mm of "Available / Excess" stablecoins

Observations

- We are borrowing ~\$1bn more stablecoins at an all-in cost of ~8% than is required to continually fund the mis-match; adding ~\$80mm per a year to the \$1bn balance before any incremental profit or capital raise

Sources of Stablecoin Funding (\$mm)		Uses of Stablecoin Funding (\$mm)		
DeFi Borrows	\$1,209.1	Deployments	\$1,613.5	
AAVE	606.0	Institutional Loans	1,133.9	
Compound	211.0	Bitfinex Lending	133.8	
Maker	380.0	CeFi Exchange Strategies	21.6	
Notional Finance	12.1	DeFi Strategies	323.3	
Institutional Borrows	\$825.0	Staking	0.8	
Tether	560.0	Retail Lending	\$971.7	
Other Inst. Borrows	265.0	Retail Loans	971.7	
Exchange Borrows	\$571.3	Mining	\$630.4	
FTX	571.3	Mining	630.4	
User Balances	\$1,898.2	Other	\$1,291.8	
Users	1,898.2	A-L Mismatch	1,015.7	
Other	\$107.4	G&B Purchase	103.4	
Other	107.4	Hedging / BS Collateral	30.6	
Total Sources of Stablecoin Funding	\$4,611.0	Collateral Posted	1.6	
		Misc	23.1	
		Treasury Reserves	117.4	
		Total Uses of Stablecoin Funding	\$4,507.3	
		Excess / (Deficit) Stablecoins	\$103.7	
		Total Uses of Stablecoins + Excess	\$4,611.0	

Candidates for unwind / liquidity generation to be discussed on Slide 7

Can be used to fund OpEx

Notably, despite the persistent deficit in stablecoins and resulting inability to access encumbered collateral, Celsius at times had borrowed more stablecoin than it needed. For example, the May 11, 2022 slide identified \$103.7 million of "excess" stablecoin that had not been deployed and was not necessary to "fund the mis-match."¹³⁶⁸ Rather than repay some of its \$2.6 billion in stablecoin borrowing (\$1.2 billion from DeFi, \$825 million from institutional lenders, and \$571 million from exchanges) to reduce its costs and free up pledged customer assets, Celsius flagged the \$103.7 million for its own purposes, noting it "Can be used to fund OpEx."¹³⁶⁹

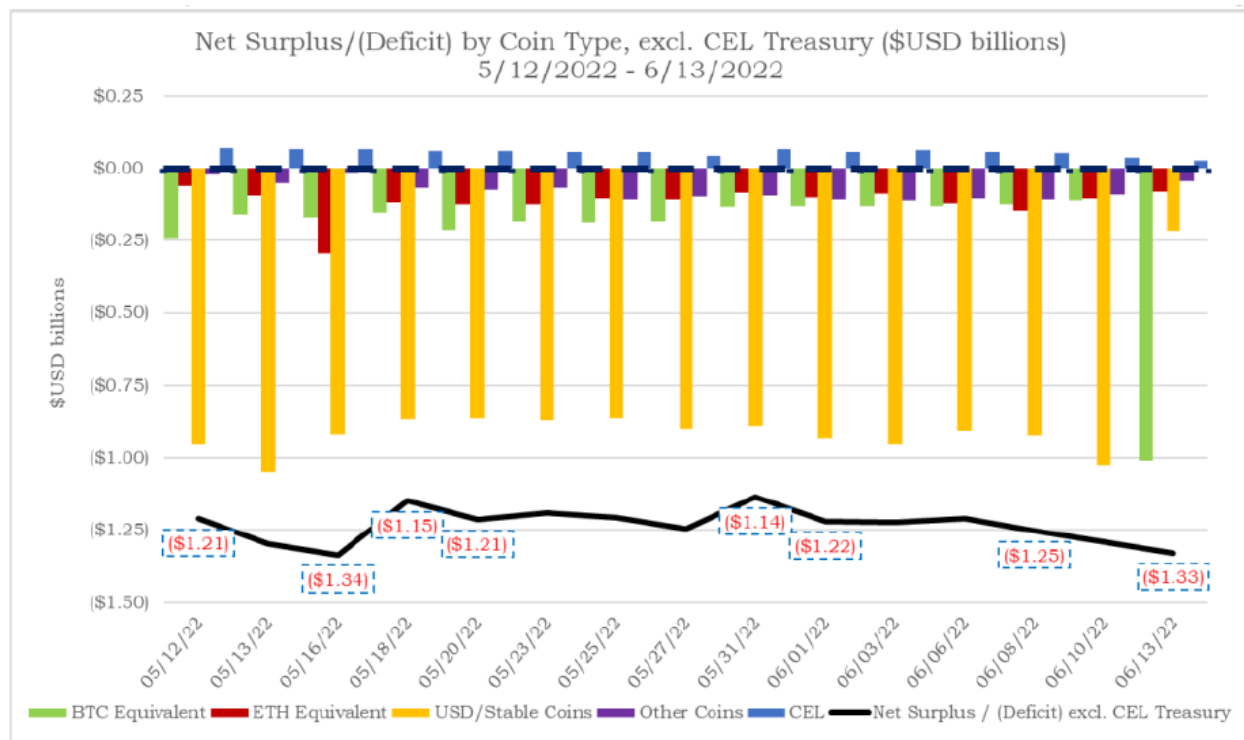
Celsius could not take possession of the posted BTC and ETH collateral — or use it to redeem customer withdrawals—unless and until it was able to repay

¹³⁶⁸ CEL-UCC-000428860, at 15.

¹³⁶⁹ CEL-UCC-000428860, at 15.

its outstanding loans and unwind its DeFi positions. This dynamic is evident in the coin-by-coin figures for May and June 2022. During that time, Celsius expended BTC and ETH to repay outstanding stablecoin loans and unwind DeFi positions, to in turn obtain more BTC and ETH that it could deliver to withdrawing customers.¹³⁷⁰ As a result, its stablecoin deficit effectively disappeared, and was replaced by a BTC and ETH deficit that in reality largely dated back to 2021.

FIGURE 25: NET COIN SURPLUS/(DEFICIT) MAY 2022 TO PETITION DATE



Note: This chart reflects the net surplus or deficit in all coins (total assets under management) categorized by coin type, beginning on May 12, 2022.

¹³⁷⁰ Bolger, Rod, re stETH Proposal, Email (June 7, 2022), CEL-UCC-00012242; Bolger, Rod, re: DeFi, Email, (June 13, 2022), CEL-UCC-00007209. For example, analysis of Freeze Report data between June 10 and June 13, 2022 shows that Celsius returned 83% of its stablecoin institutional loans to retrieve over \$1 billion in pledged collateral of BTC and ETH.

Throughout this time, Celsius incentivized customers to deposit more stablecoin. Shortly after the Terra/Luna collapse, Celsius once again specifically targeted stablecoins, updating its promo codes to include a “STABLECOIN50” promo code that offered \$50 of BTC if a customer deposited a minimum of \$2,500 of USDC, USDT, BUSD, GUSD, or USDP.¹³⁷¹ This stablecoin promo code remained on the website until July 7, 2022 when Celsius removed all promo codes and replaced the page with a message that explained that due to the Pause, some products and services were not currently available.

B. Coin Liquidity.

In general, Celsius categorized its assets into 6 liquidity tiers.

Liquidity Tier	Liquidation Period
1	Instant
2	Up to 24 hours
3	Up to 3 days
4	Up to 7 days
5	Up to 30 days
6	Greater than 30 days, or undetermined recovery

Both Tiers 5 and 6 were considered “illiquid,” because “only a small percentage” of deployments in these tiers “can be practically unwound.”¹³⁷²

Liquidity Tier 1 hewed closest to Mr. Mashinsky’s public representations to customers about the availability of their coins for withdrawal. As of April 14, 2022, the Celsius Terms of Use stated that a customer may make “a complete or

¹³⁷¹ Celsius, Promo Codes, (May 19, 2022) <https://web.archive.org/web/20220519184827/https://celsius.network/promo-codes>.

¹³⁷² Asset-Liability Committee (ALCO), Internal Company Document (May 25, 2022), CEL-UCC-00042875 at 9.

partial withdrawal of Eligible Digital Assets . . . at any time.”¹³⁷³ Mr. Mashinsky emphasized that customer withdrawals would occur promptly at any time and on the same day they were requested. On December 6, 2020, for example, Mr. Mashinsky tweeted, “You can deposit in the morning and withdraw in the afternoon if you change your mind.” In a July 2021 AMA, Mr. Mashinsky said, “Our job is to . . . allow you to withdraw at any time you need, 24/7, 365.”¹³⁷⁴ On May 21, 2022, Mr. Mashinsky claimed, “You can withdraw any BTC you want from @CelsiusNetwork at any time.” And two days before the Pause, during his June 10, 2022 AMA, Mr. Mashinsky said, “Anyone who wants to withdraw has no problem, right? I know people who just withdraw to make sure they can withdraw and then they put it back in, you know.”¹³⁷⁵

In contrast, the Celsius Terms of Use stated that crypto assets would be available for withdrawal within three days of a customer withdrawal request.¹³⁷⁶ And, for large withdrawals, Celsius conducted a security review that could

¹³⁷³ *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC Providing Terms Of use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393], at Ex. A-8; Terms of Use, Section 11 (April 14, 2022).

¹³⁷⁴ Celsius, Celsius AMA July 23rd 2021 (July 23, 2021) https://www.youtube.com/watch?v=upocw1WaTvA&list=PLLjzjU2vvKVMNgmFM2oV79WQ0iSsqf_5oV&index=45

¹³⁷⁵ Celsius, Celsius AMA June 10 2022 (June 10, 2022) https://www.youtube.com/watch?v=GyRO_W-utXs

¹³⁷⁶ *Declaration of Alex Mashinsky, Chief Executive Officer Of Celsius Network LLC Providing Terms Of use Dating Back To February 18, 2018* dated August 8, 2022 [Dkt. 393], at Ex. A-8; Terms of Use, Section 11, April 14, 2022 (“Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may require up to three (3) days after you submit your withdrawal request to process the withdrawal.”). The Terms of Use did not address the speed of withdrawals prior to this version.

prolong the processing of the withdrawal.¹³⁷⁷ Tiers 1 – 3 represented coins that Celsius could use to meet customer withdrawals consistent with the Terms of Use and security review process. By comparison, Tier 4 was not available for up to 1 week, Tier 5 was not available for up to 30 days, and Tier 6 was locked up indefinitely, meaning that coins in those three liquidity tiers could not be used for withdrawals under the Terms of Use.

Celsius did not treat different crypto assets as fungible for liquidity purposes. Mr. Tappen, for example, did not view stETH as a substitute for ETH in assessing Celsius’s liquidity position and its ability to meet customer withdrawals because they are “not the same thing.”¹³⁷⁸ In another example, Mr. Tang, on June 2, 2022, observed that Celsius had taken certain customer tokens (foreign-currency denominated trust tokens of TCAD, TAUD, TGBP, THKD) and sold them for USD stablecoins, but could not obtain replacements.¹³⁷⁹ He and Mr. Tappen agreed that Celsius “would be in trouble” “if there’s a run [on] the bank event.”¹³⁸⁰

The Examiner reviewed, across all coins and then for each coin category, the percentage of assets available within Liquidity Tier 1 (consistent with customer expectations), Tiers 1 – 3 (consistent with the Terms of Use), and Tiers

¹³⁷⁷ Examiner Interview of Nuke Goldstein (Head of Innovation – Celsius, November 17, 2022).

¹³⁷⁸ CEL-UCC-00209673; CEL-UCC-00092060; Celsius, Risk Committee Meeting Agenda (June 9, 2022), CEL-UCC-00514154.

¹³⁷⁹ Tang, Kai, Slack (June 2, 2022), CEL-UCC-00092036.

¹³⁸⁰ *Id.*

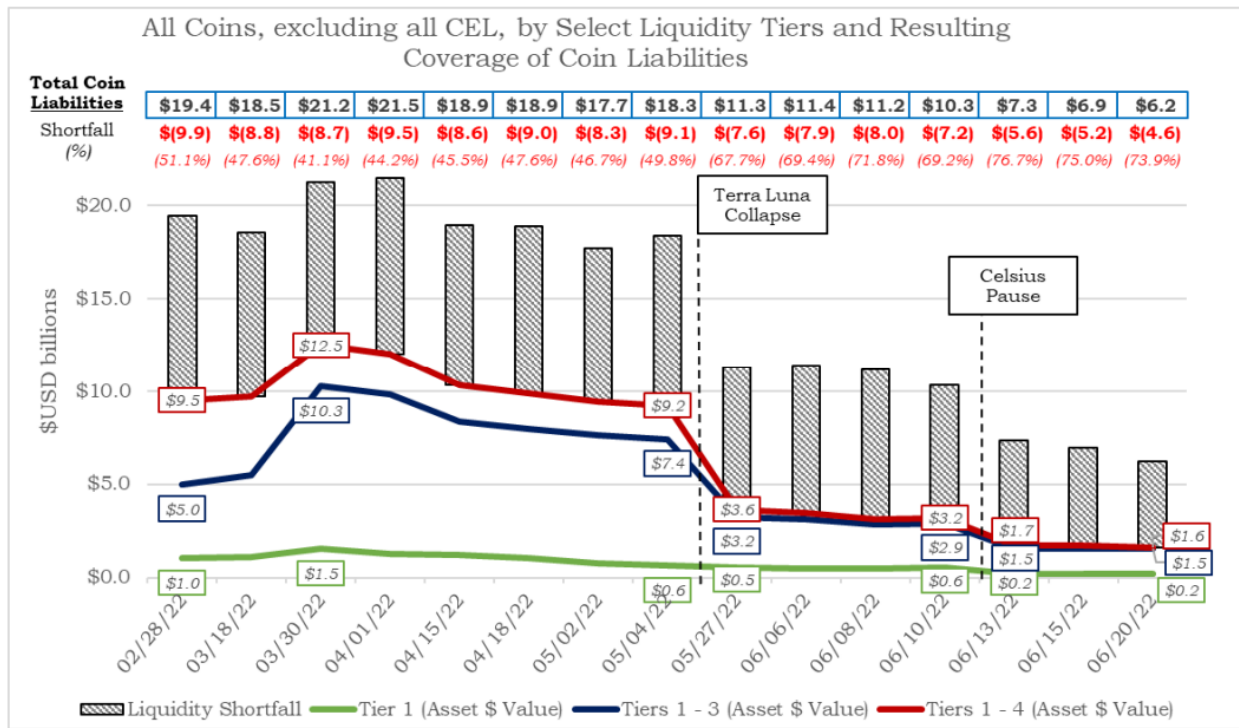
1 – 4 (excluding the illiquid assets in Tiers 5 and 6). Significantly, the Liquidity Tiers included all assets under management, not only customer assets, and thus include BTC and ETH that had been pledged as collateral to borrow stablecoins. Those assets would not be available unless stablecoin could be delivered to repay the loans. For example, DeFi assets were included across Liquidity Tiers 1 – 4.¹³⁸¹

Across all coins (excluding CEL), where data is available from the Waterfall Reports, Liquidity Tiers 1 – 4 were significantly short of total coin liabilities throughout 2022, and this shortfall grew leading up to the Pause. As of February 28, 2022, 55% of Celsius's assets fell within Tiers 1 – 4, covering 49.5% of liabilities and leaving a liquidity coverage shortfall of \$9.9 billion. As of May 27, 2022, following the Terra/Luna collapse, only 35% of Celsius's assets fell within Tiers 1 – 4, covering 33.3% of liabilities and leaving a \$7.6 billion liquidity coverage shortfall. As of June 13, 2022, following the Pause, only 23% of Celsius's assets fell within Tiers 1 – 4, covering only 23.3% of liabilities and leaving a \$5.6 billion liquidity coverage shortfall.

By the end of May 2022, Tier 4 had been mostly unwound. Throughout, Tier 1 coverage remained low, starting at 6% of assets on February 28, 2022, falling to 5% of assets after Terra/Luna, and decreasing to 3% on June 13, 2022.

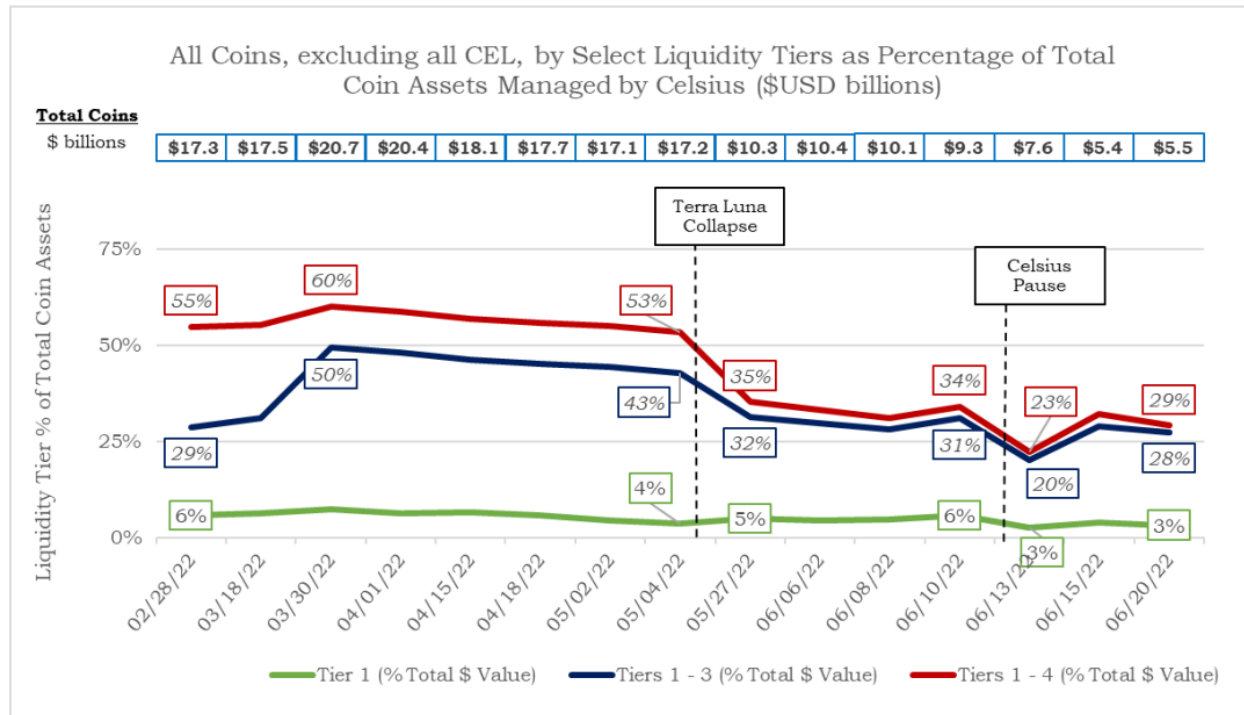
¹³⁸¹ Slack Channel (June 6, 2022), CEL-UCC-00209673.

FIGURE 26: ALL COIN LIQUIDITY (\$)



Note: This chart reflects all coins comprising Celsius AUM (excluding CEL and custody assets) measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

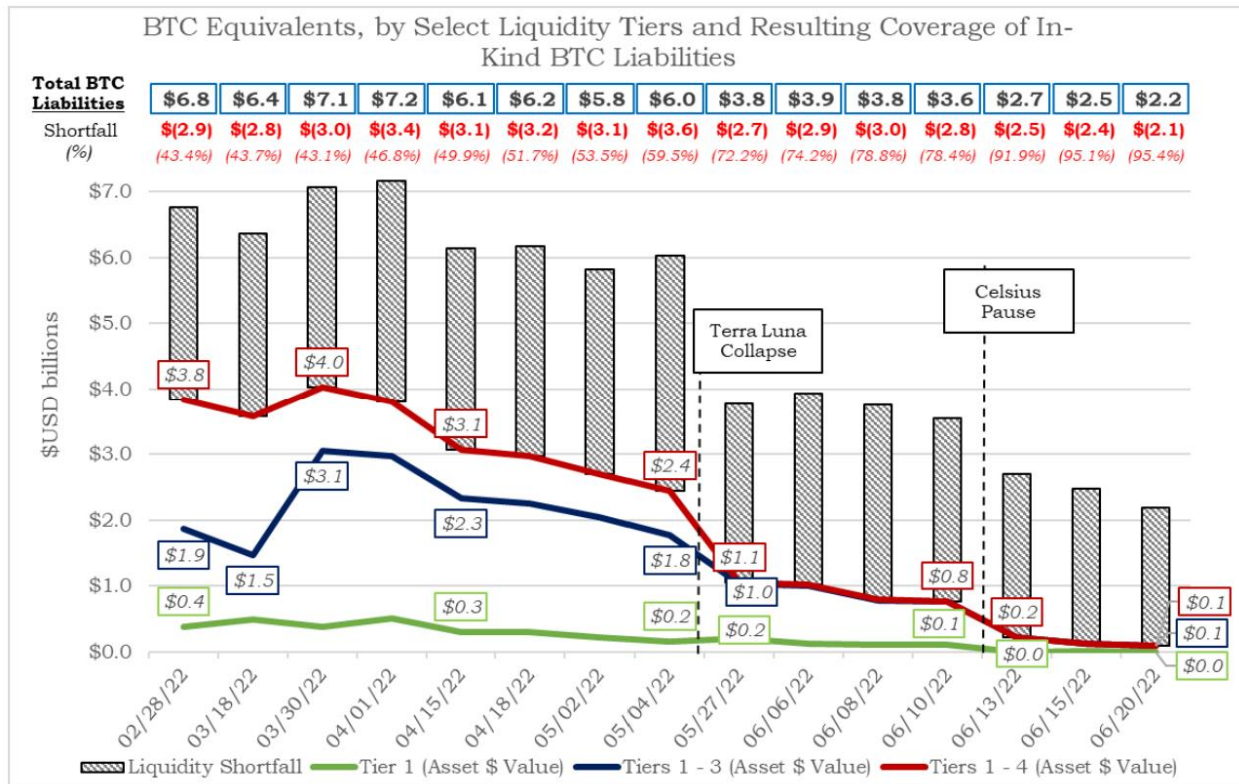
FIGURE 27: ALL COIN LIQUIDITY (%)



Note: This chart reflects all coins comprising Celsius AUM (excluding CEL and custody assets) measured as a percentage of all coins in AUM, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

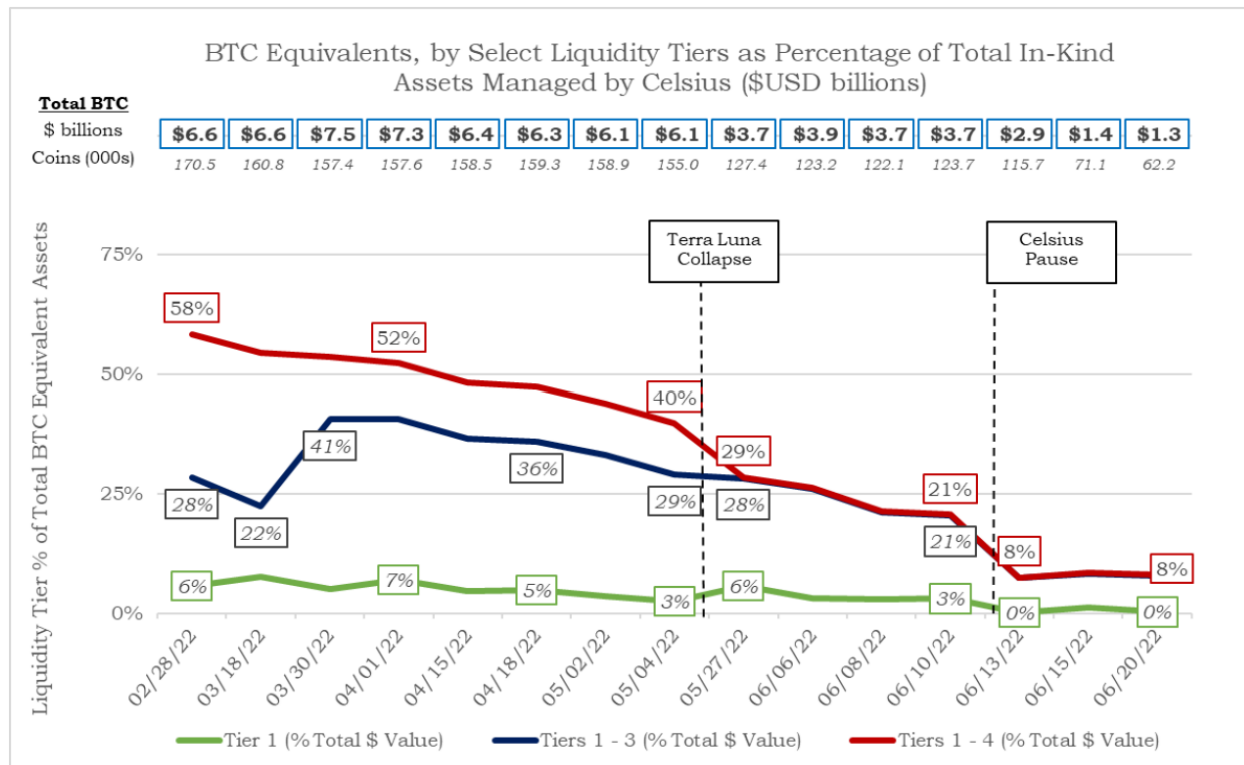
As to BTC and equivalents, liquidity coverage was worse. Following the Terra/Luna collapse, only 29% of Celsius's BTC and equivalent assets remained in Tiers 1-4 (and by this time, Tier 4 assets had been unwound), while Tier 1 assets remained at 6%. However, the liquidity coverage shortfall had risen from 43.4% on February 28, 2022, to 72.2% on May 27, 2022. On the day after the Pause, the liquidity coverage shortfall for BTC and equivalents was over 90%, or roughly \$2.5 billion. By then, no BTC assets remained in Tier 1, and BTC assets in Tiers 1 - 4 had fallen to 8% of customer liabilities, or approximately \$200 million.

FIGURE 28: BTC LIQUIDITY (\$)



Note: This chart reflects all BTC and BTC Equivalents comprising Celsius AUM, measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

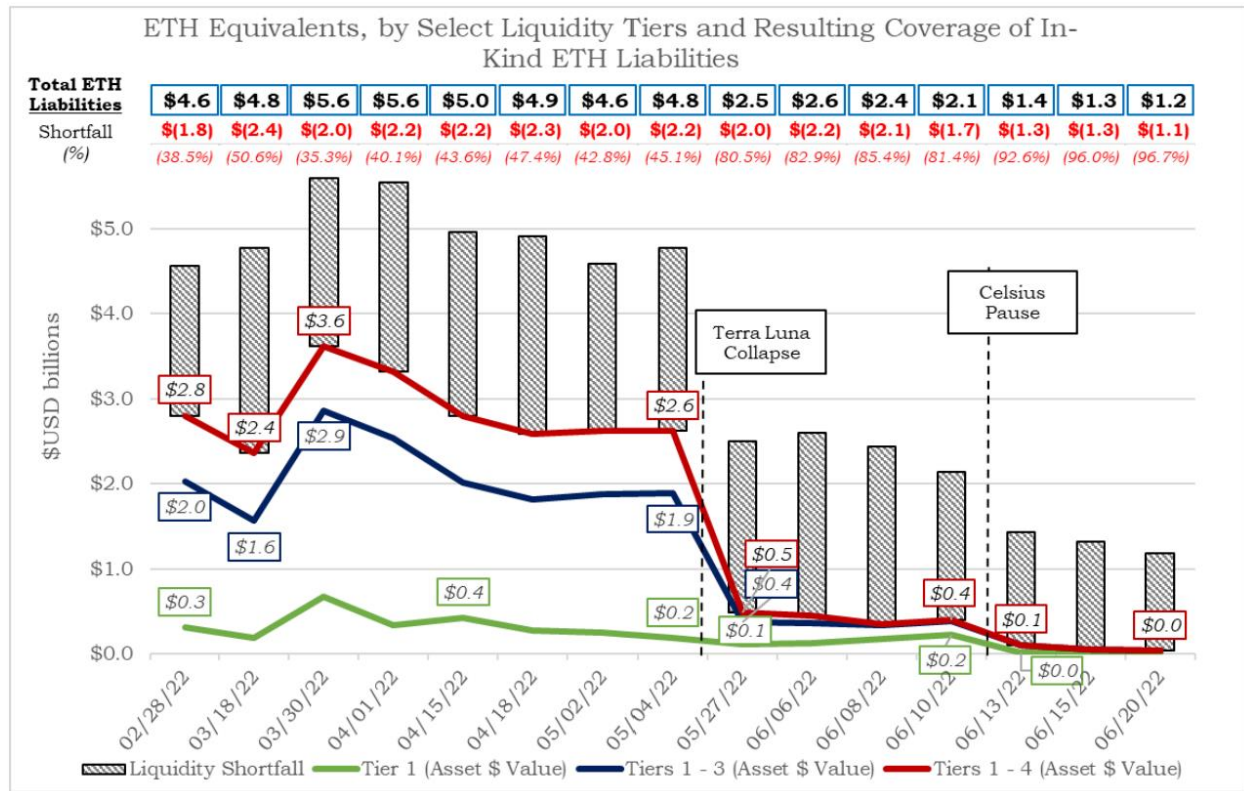
FIGURE 29: BTC LIQUIDITY (%)



Note: This chart reflects all BTC and BTC Equivalents comprising Celsius AUM, measured as a percentage of BTC and BTC Equivalents in AUM, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

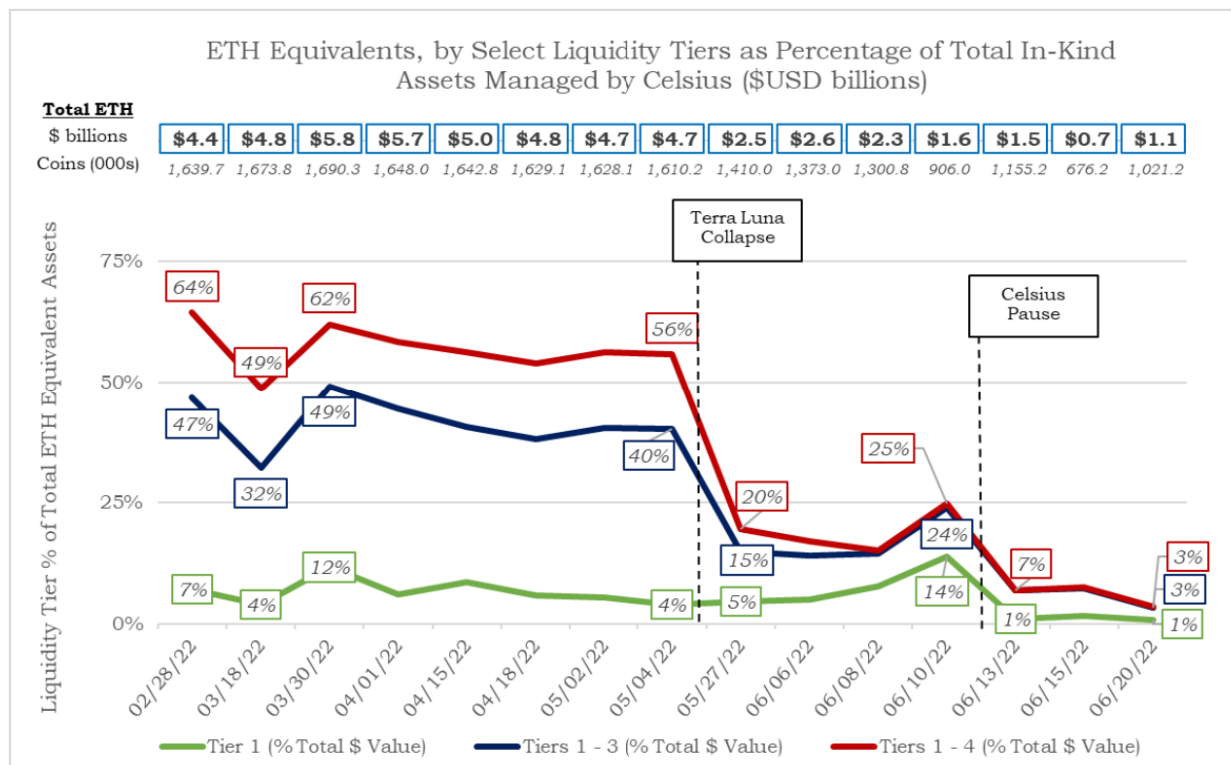
Liquidity coverage fared similarly for ETH and equivalent. Following the Terra/Luna collapse, only 20% of Celsius's ETH and equivalent assets remained in Tiers 1 – 4 (with Tier 4 assets largely having been unwound) and Tier 1 assets fell to 5%. At the same time, the liquidity coverage shortfall had increased from 38.5% on February 28, 2022, to 80.5% on May 27, 2022, or roughly \$2 billion. On the day after the Pause, the liquidity coverage shortfall for ETH and equivalents was over 92%, or roughly \$1.3 billion. By then, Tier 1 ETH assets had been depleted to 1% and ETH assets in Tiers 1 – 4 had fallen to 7%, allowing liquidity coverage of only \$100 million.

FIGURE 30: ETH LIQUIDITY (\$)



Note: This chart reflects all ETH and ETH Equivalents comprising Celsius AUM, measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

FIGURE 31: ETH LIQUIDITY (%)

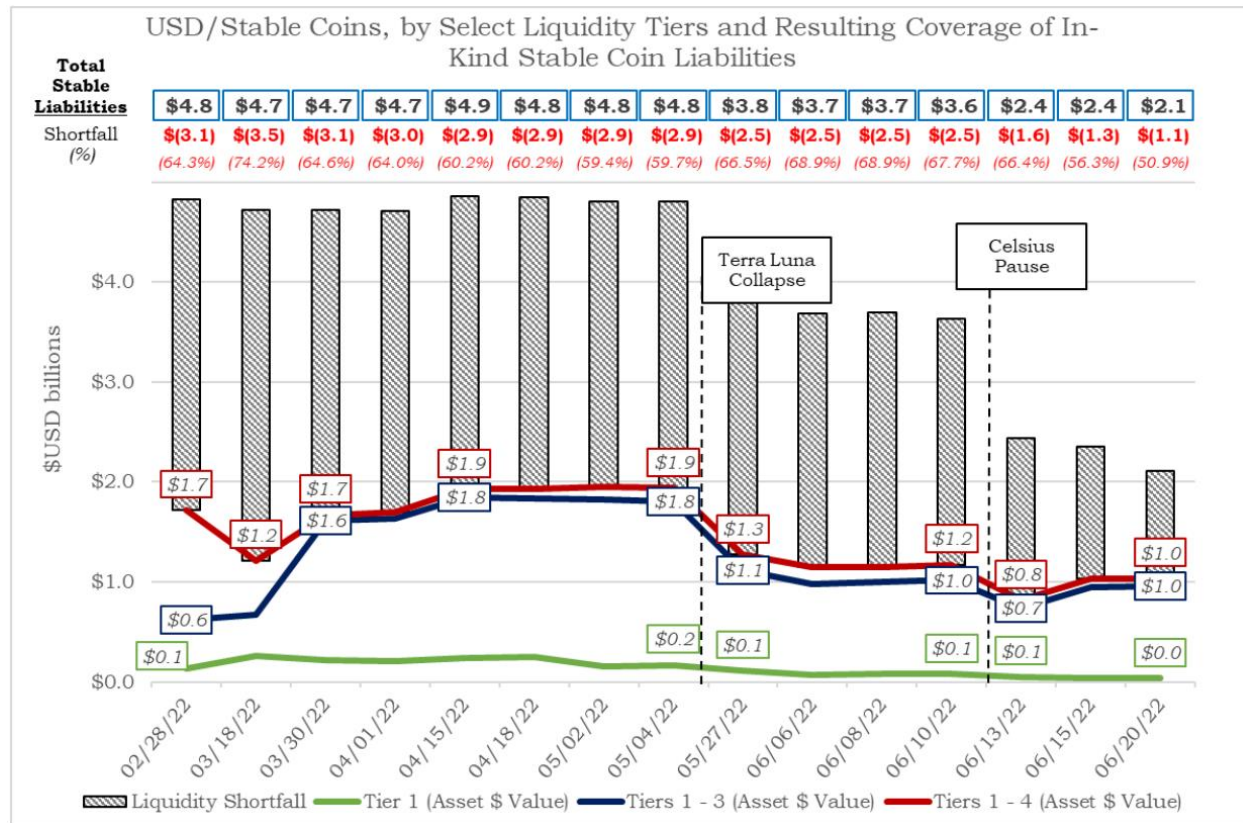


Note: This chart reflects all ETH and ETH Equivalents comprising Celsius AUM, measured as a percentage of ETH and ETH Equivalents in AUM, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

Stablecoin fared somewhat differently. Following the Terra/Luna collapse, 43% of Celsius's stablecoin assets were in Tiers 1 – 4; Tier 1 assets remained at 4%, the same as on February 28, 2022. Over the same period, the liquidity coverage shortfall increased slightly, from 64.3% on February 28, 2022 (roughly \$3.1 billion), to 66.5% on May 27, 2022, or roughly \$2.5 billion. On the day after the Pause, the liquidity coverage shortfall remained at similar levels of 66.4%, or roughly \$1.6 billion. During this time, non-customer stablecoin liabilities fell as

Celsius repaid its stablecoin loans and unwound DeFi positions to gain access to the collateral.¹³⁸²

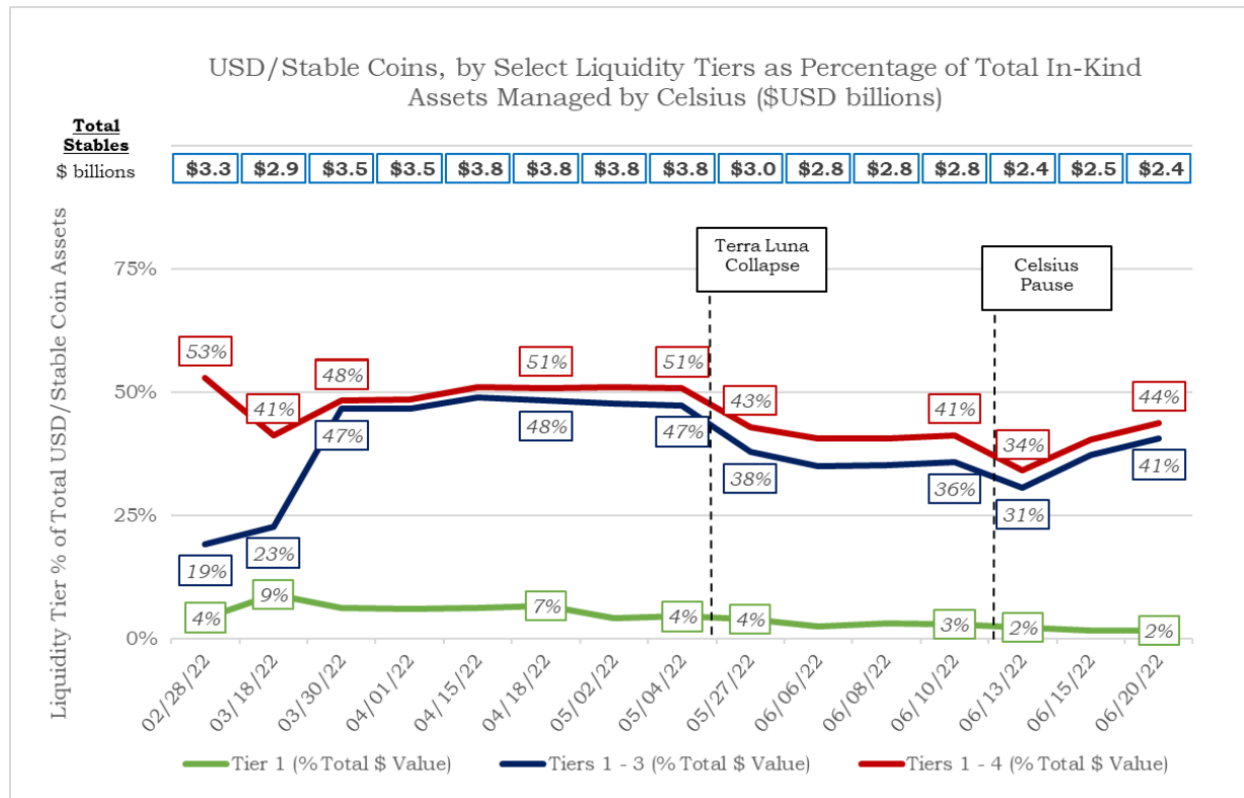
FIGURE 32: STABLECOIN LIQUIDITY (\$)



Note: This chart reflects all Stablecoin comprising Celsius AUM, measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

¹³⁸² Bolger, Rod, re stETH Proposal, Email (June 7, 2022), CEL-UCC-00012242; Bolger, Rod, re: DeFi, Email (June 13, 2022), CEL-UCC-00007209; CEL-UCC-00183964; CEL-UCC-00092167.

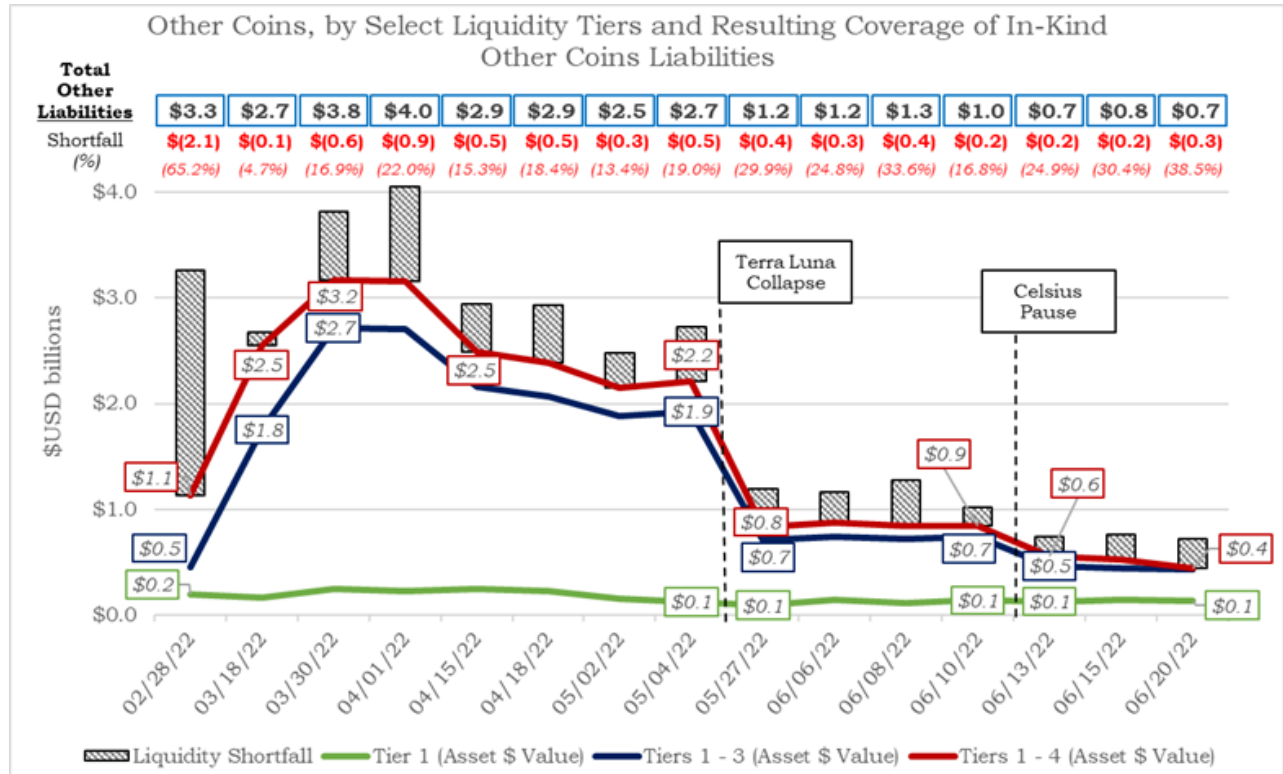
FIGURE 33: STABLECOIN LIQUIDITY (%)



Note: This chart reflects all Stablecoin comprising Celsius AUM, measured as a percentage of Stablecoin in AUM, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

As to Other Coins, following the Terra/Luna collapse, Celsius experienced a liquidity coverage shortfall of roughly 30%, or approximately \$400 million. On the day after the Pause, the liability coverage shortfall fell slightly to 24.9%, amounting to roughly \$200 million.

FIGURE 34: OTHER COIN LIQUIDITY (\$)



Note: This chart reflects all Other Coins comprising Celsius AUM, measured in dollars, in Liquidity Tiers 1, 1-3, and 1-4 as reflected in Celsius's records.

The below tables summarize the liquidity coverage in Tier 1, Tiers 1 – 3, and Tiers 1 – 4 for all four coin types (excluding CEL) between February 28, 2022 and June 20, 2022.

FIGURE 35: LIQUIDITY COVERAGE FOR ALL COINS

Report Date	BTC Equivalent			ETH Equivalent		
	Tier 1: % of Total	Tiers 1-3: % of Total	Tiers 1-4: % of Total	Tier 1: % of Total	Tiers 1-3: % of Total	Tiers 1-4: % of Total
02/28/22	5.8%	28.5%	58.4%	7.1%	46.7%	64.5%
03/18/22	7.6%	22.4%	54.4%	3.9%	32.3%	48.7%
03/30/22	5.2%	40.7%	53.6%	11.7%	49.2%	62.1%
04/01/22	7.0%	40.7%	52.2%	6.0%	44.5%	58.4%
04/15/22	4.7%	36.7%	48.2%	8.6%	40.6%	56.3%
04/18/22	4.9%	36.0%	47.4%	5.8%	38.1%	54.0%
05/02/22	3.5%	33.2%	44.1%	5.3%	40.4%	56.4%
05/04/22	2.5%	29.1%	39.8%	4.0%	40.2%	55.8%
05/27/22	5.7%	28.3%	28.6%	4.5%	15.0%	19.5%
06/06/22	3.2%	26.1%	26.3%	5.0%	14.0%	16.9%
06/08/22	3.0%	21.3%	21.4%	7.7%	14.6%	15.2%
06/10/22	3.1%	20.6%	20.7%	13.8%	23.9%	24.8%
06/13/22	0.1%	7.5%	7.5%	0.9%	6.8%	6.9%
06/15/22	1.2%	8.4%	8.5%	1.6%	7.3%	7.6%
06/20/22	0.3%	7.9%	8.0%	0.9%	3.3%	3.5%

Report Date	USD/Stable Coins			Other Coins		
	Tier 1: % of Total	Tiers 1-3: % of Total	Tiers 1-4: % of Total	Tier 1: % of Total	Tiers 1-3: % of Total	Tiers 1-4: % of Total
02/28/22	4.2%	19.1%	52.9%	6.6%	14.8%	36.6%
03/18/22	8.9%	22.6%	41.2%	5.5%	56.1%	81.3%
03/30/22	6.1%	46.6%	48.3%	6.5%	69.7%	81.3%
04/01/22	6.1%	46.6%	48.5%	5.8%	69.1%	80.7%
04/15/22	6.2%	48.8%	51.0%	8.7%	73.5%	84.9%
04/18/22	6.6%	48.4%	50.9%	8.1%	73.4%	84.8%
05/02/22	4.1%	47.7%	50.9%	6.3%	75.4%	86.1%
05/04/22	4.4%	47.3%	50.8%	5.0%	74.8%	85.7%
05/27/22	3.8%	37.9%	43.0%	8.0%	61.2%	71.8%
06/06/22	2.4%	34.8%	40.6%	13.2%	66.7%	78.2%
06/08/22	3.0%	35.2%	40.6%	10.2%	59.9%	70.2%
06/10/22	2.8%	35.7%	41.2%	12.4%	63.6%	73.0%
06/13/22	2.2%	30.5%	34.0%	18.9%	66.3%	79.3%
06/15/22	1.5%	37.2%	40.4%	22.3%	65.0%	77.7%
06/20/22	1.6%	40.6%	43.8%	17.4%	55.4%	57.3%

Due in part to the billion-dollar hole in its balance sheet, Celsius lacked liquidity to cover anticipated future withdrawals of every customer, and its remaining liquid assets were being quickly depleted. If Celsius had not instituted the Pause and the run on the bank continued, new customer deposits inevitably

would have become the only liquid source of coins for Celsius to fund withdrawals.

C. Coin Shortfalls And Customer Withdrawals.

Prior to the Pause, Celsius appeared to satisfy the withdrawal requests from the commingled pool of crypto assets under management. In some instances, however, between June 9 and June 12, Celsius directly used new customer deposits to fund customer withdrawal requests.

As previously explained in the Interim Report, Celsius processed customer withdrawals through what it referred to as the “frictional wallets,” or what Mr. Tappen described as “the company’s ATM.”¹³⁸³ Celsius generally maintained volumes of crypto assets in the frictional wallets sufficient to meet 95 percent of historical daily withdrawal levels.¹³⁸⁴ In the normal course, as assets in the frictional wallets decreased, Treasury would “top off” the frictional wallets by transferring crypto assets from the Main wallets.¹³⁸⁵ If there was insufficient liquidity in the Main wallets for this purpose (as occurred prior to the Pause), Celsius would “bring back assets that were deployed”¹³⁸⁶ and return those assets to the “Network Deposit” wallets. Celsius then moved those returned assets from

¹³⁸³ Examiner’s Interim Report at 59; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

¹³⁸⁴ Examiner’s Interim Report at 59; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

¹³⁸⁵ Examiner’s Interim Report at 59; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

¹³⁸⁶ Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius, January 12, 2023).

the Network Deposit wallets to the Main wallets, where they could be made available for withdrawals after a further transfer to the frictional wallets.¹³⁸⁷

But the Main wallets also contained new crypto assets deposited by customers. As described in the Interim Report, customer deposits would first be transferred into user-specific “bridge wallets,” and then swept periodically into the Main wallets.¹³⁸⁸ Accordingly, the Main wallets held (1) customer assets that had not been deployed, (2) coins returned from deployment, and (3) revenue that Celsius had generated from its deployments but not re-deployed. Because the Main wallets held commingled coins including new customer deposits, those new customer deposits were available to fund older customer withdrawals, along with deployments that Celsius had unwound.

The likelihood that some new deposits were used to fund withdrawals increased as Celsius ran low on liquidity. To illustrate, on June 12, the day of the Pause, Celsius personnel were closely monitoring the coins available for customer withdrawals in both the frictional and Main wallets.¹³⁸⁹ In many instances, according to the internal Celsius spreadsheet from internal Slack messages (depicted below), Celsius could not meet the withdrawals with coins in the frictional wallets. In such cases, Celsius had to rely on additional coins in the Main wallets. Yet, in some cases even coins in the Main wallets were not

¹³⁸⁷ Examiner’s Interim Report at 59-60; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

¹³⁸⁸ Examiner’s Interim Report at Section IV.F; Examiner Interview of Dean Tappen (Coin Deployment Specialist – Celsius, November 16, 2022).

¹³⁸⁹ Treasury_Deployable_Liquidity Slack (June 12, 2022), CEL-EXAM-00013504.

sufficient, and so Celsius requested the return of additional coins that had been deployed. But those coins were not always available. In one case, Celsius could not meet BNB withdrawal requests on June 12 and had “to borrow them on FTX as a temporary solution.”¹³⁹⁰ In addition, according to internal Slack messages, it took until June 13 for Celsius to unwind PAXG to meet withdrawal requests made on June 12.¹³⁹¹

Coin	# Pending Withdrawals	Amount (In-Kind) Pending Withdrawals	Main	Frictionals Balances	Largest requirement	Pending withdrawals Minus Main (D-C)	Pending withdrawals Minus Main minus Frictionals (E+F+G)	Comments (GMT)
BNB	3	(476)	53.0	2	(408)	(423)	(420)	Request 500
BTC	136	(375)	5.8	512	(83)	(369)	143	Frictionals Cover
BUSD	3	(88,176)	488.2	39,866	(86,357)	(87,688)	(47,821)	Request 90k
DOGE	2	(27,103,347)	1,403,448.4	10,431,211	(18,000,211)	(25,699,899)	(15,268,688)	Request 28m
ETH	91	(3,737)	28.4	1,507	(1,500)	(3,709)	(2,202)	Request 4k
GUSD	1	(1,264,999)	589,103.7	753,395	(1,264,999)	(675,895)	77,500	Request 1.5m
LTC	10	(7,237)	235.4	1	(3,534)	(7,001)	(7,001)	Request 8k
MANA	3	(245,898)	39.1	18,117	(148,000)	(245,859)	(227,742)	Request 300k
MATIC	236	(2,481,381)	146,517.5	979,999	(271,000)	(2,334,863)	(1,354,864)	Request 2.5m
OMG	2	(115)	1.0	18,377	(62)	(114)	18,263	Frictionals cover
PAXG	30	(2,139)	335.4	0	(1,500)	(1,803)	(1,803)	Request 3k
SNX	2	(332)	60.5	50,153	(325)	(272)	49,881	Request 350
SOL	52	(9,562)	6,311.6	4,989	(3,883)	(3,250)	1,739	Request 10k
USDC	50	(13,259,347)	8,096,323.0	2,107,887	(9,937,172)	(5,163,024)	(3,055,137)	Request 15m
USDT	19	(1,645,625)	755,830.9	521,140	(890,000)	(889,794)	(368,655)	Request 2m
XLM	22	(183,404)	11,182.5	194	(61,816)	(172,222)	(172,028)	Request 200k

For some crypto assets, Celsius unwound crypto deployments (such as coins deployed on DeFi protocols) to meet customer withdrawal requests. But that was not always the case, and in several coins, Celsius used incoming customer deposits to fund withdrawals in the days prior to the Pause. The following are examples involving two coins identified by the Examiner based on

¹³⁹⁰ Treasury_Deployable_Liquidity Slack (June 12, 2022), CEL-EXAM-00013504.

¹³⁹¹ Treasury_Deployable_Liquidity Slack (June 12, 2022), CEL-EXAM-00013504.

a non-exhaustive review of a subset of crypto assets withdrawn by Celsius customers between June 9 and June 12.

One clear example occurred with GUSD, the Gemini stablecoin. The table below shows the GUSD balance in Celsius's Main and frictional wallets as of June 9, 2022. Based on a review of the Fireblocks transaction reports and wallet-level data, Celsius ended that day (and began June 10) with a total amount of 1.96 million GUSD. Over the next three days, Celsius honored withdrawals of GUSD in the total amount of 3.94 million coins, meaning that Celsius needed almost 2 million additional GUSD to meet those obligations. But Celsius did not make any internal transfers of crypto assets to the Main wallet to fund these withdrawals. Instead, as new user GUSD deposits were swept into the Main wallet, Celsius transferred those deposits into the frictional wallets. New GUSD deposits over this three-day period totaled 2.62 million coins, and Celsius used almost 2 million of those newly-deposited coins to fund withdrawals.

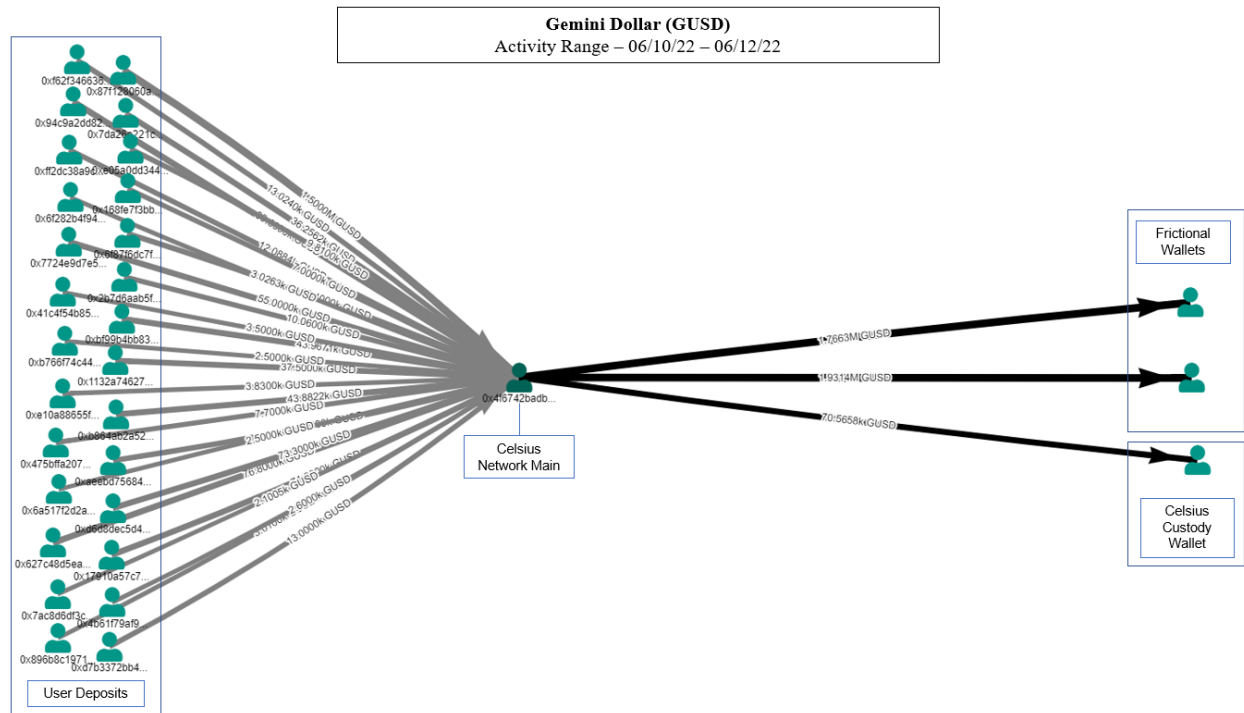
FIGURE 36: FIREBLOCKS WALLET GUSD TRANSACTIONS

Coin	Wallet			Totals	
	GUSD	Main	Frictional		Frictional 2
June 9, 2022					
Balance		1,597,197.82	48,244.15	321,838.68	1,967,280.65
June 10, 2022					
User Deposits		1,652,839.61	-	-	1,652,839.61
Internal Transfers		-	-	-	-
Frictional Funding		(366,519.56)	366,519.56	-	-
Withdrawals		(70,565.84)	(105,583.80)	(169,584.08)	(345,733.72)
Ending Balance		2,812,952.03	309,179.91	152,254.60	3,274,386.54
June 11, 2022					
User Deposits		423,619.54	-	-	423,619.54
Internal Transfers		-	-	-	-
Frictional Funding		(2,671,458.38)	1,186,072.71	1,485,385.67	-
Withdrawals		-	(1,129,713.83)	(826,322.58)	(1,956,036.41)
Ending Balance		565,113.19	365,538.79	811,317.69	1,741,969.67
June 12, 2022					
User Deposits		103,447.69	-	-	103,447.69
Internal Transfers		-	-	-	-
Frictional Funding		(659,745.67)	378,857.52	280,888.15	-
Withdrawals		-	(533,041.58)	(964,068.98)	(1,497,110.56)
Ending Balance		8,815.21	211,354.73	128,136.86	348,306.80
June 13, 2022					
User Deposits		449,176.01	-	-	449,176.01
Internal Transfers		-	-	-	-
Frictional Funding		-	-	-	-
Withdrawals		-	(89,884.27)	(54,999.44)	(144,883.71)
Ending Balance		457,991.22	121,470.46	73,137.42	652,599.10

Note: Analysis of Fireblocks data reflecting on-chain of deposits and withdrawals of GUSD into and out of Celsius's wallets from June 9 to June 13, 2022.

The below diagram illustrates the sources of GUSD coins being moved to the Main wallet and subsequent transfers from Main to frictional wallets during this time.

FIGURE 37: GUSD COIN MOVEMENT 6/10 – 6/12/2022



Note: This chart depicts the source of GUSD used for customer withdrawals from June 10 – 12, 2022.

In several other crypto asset classes, further detailed in Appendix 16, Celsius also used newly deposited coins to fund withdrawals on June 11 and June 12, 2022. For USDC, for example, Celsius entered June 10, 2022 with 8.2 million coins in its Main and frictional wallets. It supplemented that amount over the following three days with internal transfers of an additional 163.7 million coins to Main, providing it with 171.9 million total USDC in the Main and frictional wallets to fund withdrawals. Over the same time period, Celsius honored customer withdrawals of 205.4 million USDC. To make up the 33.4 million-coin difference, Celsius relied on 33.4 million USDC of new customer deposits (and between June 10 and June 13, 2022, customers deposited an additional 36.1 million USDC, allowing Celsius to do so).

D. Celsius's Illiquid Assets.

By Spring of 2022, Celsius had limited sources of liquidity other than customer crypto assets. Although Celsius had invested significant sums to start up Celsius Mining and to buy back CEL, neither of these assets were liquid and in the case of CEL, had little to no value as Celsius headed towards filing for bankruptcy. Because of this, these assets were not a source of liquidity when considering Celsius's ability to meet customer withdrawals pre-petition.

1. Mining.

Some in Celsius's senior management, such as Mr. Cohen-Pavon, believed that Celsius could address the hole in its balance sheet through an Initial Public Offering ("IPO") or sale of its mining company, Celsius Mining, and other "non-balance sheet assets."¹³⁹² As Mr. Sunada-Wong observed: "One of the huge structural problems we have is that we have a hole in our balance sheet, and that isn't going to change unless the mining company gets a valuation."¹³⁹³

Originally called Celsius Core LLC, Celsius Mining was incorporated as a wholly-owned subsidiary of Celsius Holding LLC on October 5, 2020.¹³⁹⁴ By

¹³⁹² Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, Nov. 15, 2022 & Dec. 29, 2022). Mr. Bolger also expressed his view that the mining company was healthy and would have helped Celsius if it became profitable in time. Examiner Interview of Rod Bolger (Former Chief Financial Officer – Celsius).

¹³⁹³ Denizkurdu, Aslihan, Re: Hi Please set up a meeting, Email (March 2, 2022) CEL_EXAM-00054520; Celsius, Slack, (April 13, 2022) CEL-UCC-00824127 (Mr. Graham: "Is mining an institutional borrower for the purposes of this statement?" Mr. Sunada-Wong: "Good question. Right now it is a hole-y owned subsidiary.").

¹³⁹⁴ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); <https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx>; Debtors' Motion for Joint Administration of Chapter 11 Cases (Dkt. 1).

June 30, 2022, Celsius had invested over \$579.2 million (with interest) in Celsius Mining, recorded as an intercompany loan from Celsius Network (UK) to Celsius Mining.¹³⁹⁵ Celsius Mining used these funds to purchase the mining rigs it operated at third-party hosted sites and to develop four of its own mining sites in Midland, Texas (as well as to acquire another site in Barber Lake, Texas that to date has not been developed).¹³⁹⁶

Celsius continued to invest in Celsius Mining even after the Pause, advancing an additional \$70 million loan to its mining business shortly before the Petition Date.¹³⁹⁷ Celsius management also took other actions to protect what it perceived to be the value of the mining business, including entering into a letter agreement on May 7, 2022 in which Celsius Network (UK) agreed that prior to July 1, 2023, it would not demand repayment of the intercompany loans and would waive any acceleration rights.¹³⁹⁸

According to the financial statements accompanying Celsius Mining's draft SEC Form S-1, for the year ended December 31, 2021, Celsius Mining generated revenue of \$150.2 million, gross profit of \$103.7 million, net income of \$56.1 million, and Adjusted EBITDA of \$127.2 million.¹³⁹⁹ After taking into

¹³⁹⁵ Celsius Network Ltd. (UK) general ledger.

¹³⁹⁶ See Part Two of this Report.

¹³⁹⁷ Notice of Borrowing (July 11, 2022).

¹³⁹⁸ Celsius Mining Inc. Confidential Form S-1 Registration Statement Under the Securities Act of 1933, p. 182 (May 13, 2022).

¹³⁹⁹ Celsius Mining Inc. Confidential Form S-1 Registration Statement Under the Securities Act of 1933, at 19-21 (May 13, 2022); Adjusted EBITDA was defined as net revenue or loss before interest, taxes, depreciation and authorization, as further

account Celsius Mining's significant 2021 investments in mining rigs, for the year ended December 31, 2021, debt-free cash flow was approximately negative \$316.7 million.¹⁴⁰⁰

Celsius's goal was to take its mining business public through an IPO. During 2021 and into early 2022, significant market interest in crypto mining companies accompanied the run-up in BTC prices.¹⁴⁰¹ During this same time period, there was significant IPO activity in the market with mining companies such as Iris Energy and Stronghold Digital going public.¹⁴⁰² In 2021 and into early 2022, in significant part due to the then-current BTC prices, estimates performed by or for Celsius were ascribing multi-billion dollar values of the mining business.¹⁴⁰³

adjusted by the removal of realized gains on investments, realized loss from revaluation of losses under a BTC facility, and expenses related to stock-based compensation.

¹⁴⁰⁰ At least one company document showed that the 2021 EBITDA totaled \$117.3 million and capital expenditures totaled \$434.0 million. Bolger, Rod, Spreadsheet (June 13, 2022).

¹⁴⁰¹ In the summer of 2021 BTC prices fell below \$30,000, but rose again to an all-time high of over \$68,700 by November 2021, and ended the year at roughly \$46,100. Edwards, John, Bitcoin's Price History, Investopedia (December 20, 2022), <https://www.investopedia.com/articles/forex/121815/bitcoins-price-history.asp>.

¹⁴⁰² Sean, Bitcoin Miner Iris Energy Goes Public, Warrior Trading, <https://www.warriortrading.com/bitcoin-miner-iris-energy-goes-public/>; Stronghold Digital Mining, Inc. Prices Upsized \$127 million Initial Public Offering, Globe Newswire (October 19, 2021), <https://www.globenewswire.com/news-release/2021/10/19/2316958/0/en/Stronghold-Digital-Mining-Inc-Prices-Upsized-127-Million-Initial-Public-Offering.html>.

¹⁴⁰³ Examiner Interview of Roni Cohen-Pavon (Chief Revenue Officer – Celsius, Nov. 15, 2022 & Dec. 29, 2022); Declaration of Melanie Westover Yanez in Support of Series B Preferred Holders Opening Brief on the Issue of Which Debtors are Liable to Customers Under the Terms of Use, December 28, 2022 [Dkt 1796].

While a formal valuation of Celsius's businesses, including the mining business, is beyond the scope of this Report, the Examiner has reviewed several of the valuations and estimates of value of the mining business that were made during 2021 and 2022, and requested that Huron estimate the value of the mining business. Based on this analysis, which is summarized in Appendix 17, Celsius Mining likely had significant value (more than \$2 billion and perhaps as high as \$2.9 billion) in August 2021 but that value steadily declined up to and through the Petition Date (estimated to be in the \$500 - \$700 million range).¹⁴⁰⁴

Not all at Celsius agreed that Celsius Mining was the solution to its financial problems. As Mr. Tappen put it, "we also can't rely on a 3 bil mining to get us out of being systematically unprofitable and paying unsustainable rates."¹⁴⁰⁵ Mr. Perman told the Examiner that he disagreed with the seed round funding for "capital intensive mining" and believed Celsius should have "focused on our core business."¹⁴⁰⁶

Irrespective of the value of the mining business, Celsius could not have monetized its mining assets in time to fund customer withdrawals in May and June. The Examiner therefore has not taken into account the value of the mining operations or any liquidity that could be unlocked from that business in her

¹⁴⁰⁴ See Appendix 17.

¹⁴⁰⁵ CEL_EXAM-00162267; Celsius, Slack (June 14, 2022) CEL-UCC-00140547 (Mr. Perman: "mining 1bn valuation, what did we sink into it." Mr Tappen: "The 654 listed[.] So overall green." Mr. Perman: "why would NYDIG be interested or maybe they want GK8?" Mr. Tappen: "Nobody is they wanna see how bad the hole is.").

¹⁴⁰⁶ Examiner Interview of Jason Perman (Former Vice President of Treasury – Celsius, November 11, 2022).

analysis of Celsius's liquidity position.¹⁴⁰⁷

2. CEL.

Celsius classified CEL as a Tier 1 asset, meaning it was essentially capable of being liquidated on demand. But Celsius management understood that Celsius could not liquidate or deploy its CEL as a means to fill the hole in Celsius's balance sheet and Celsius never meaningfully deployed CEL to earn yield or liquidated Celsius's CEL holdings. Internal Celsius documents often referred to CEL as an "undeployed asset."¹⁴⁰⁸ Mr. Perman explained that Celsius could not deploy CEL to earn yield because of "wrong way risk. The counterparty is not willing to borrow CEL because if there's something wrong with Celsius, there's probably something wrong with CEL also. The risks point in the same way, which discourages investors and means no one is willing to accept CEL as collateral for loans."¹⁴⁰⁹

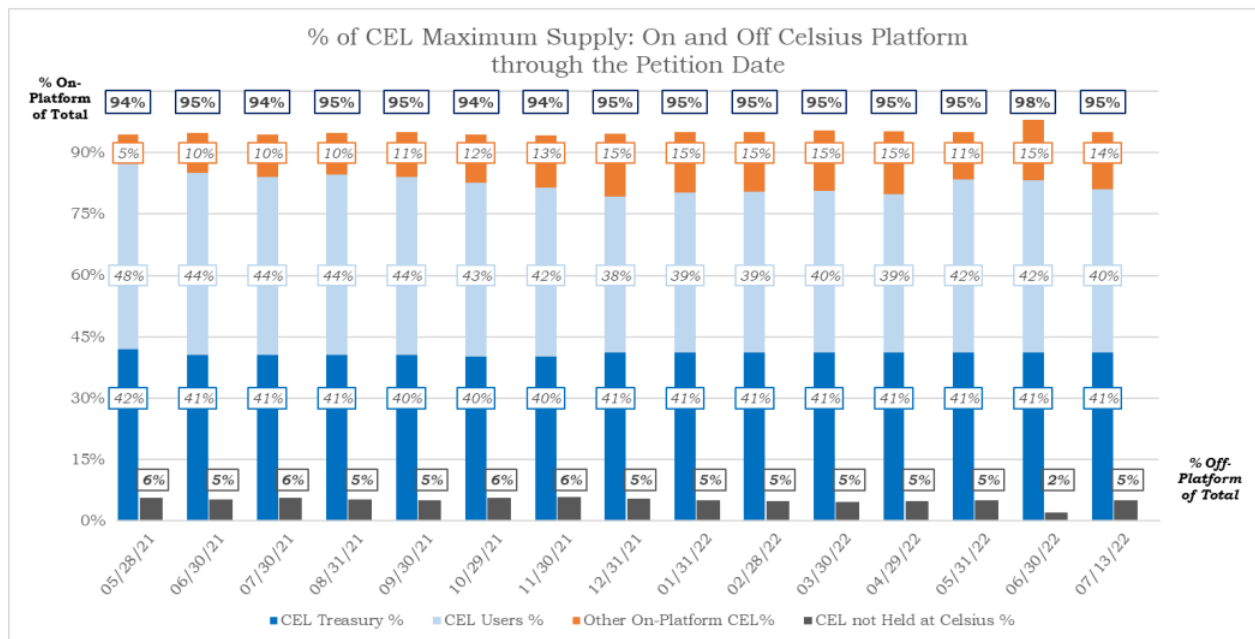
Similarly, there was virtually no market for Celsius to liquidate its CEL and if it had attempted to do so, the price of CEL likely would have dropped precipitously. As depicted in the below chart, Celsius owned at least 94% of all available CEL at all relevant times:

¹⁴⁰⁷ The Examiner takes the same position with respect to Celsius's other illiquid assets, such as GK8.

¹⁴⁰⁸ Celsius, ALCO Meeting Minutes, Internal Company Document (October 20, 2021), CEL-UCC-00042950 at 5.

¹⁴⁰⁹ Examiner Interview of Jason Perman (Head of Treasury - Celsius, November 3, 2022).

FIGURE 38: CELSIUS CEL HOLDINGS



Note: This chart depicts the percentage of all CEL held by Celsius beginning in May 2021. The black bar reflects CEL held outside of the Celsius platform (including any CEL held by insiders).

As discussed in Part Two, Section V, Celsius made the market for CEL during the time period when its price was rising;¹⁴¹⁰ once Celsius was forced to limit its support for CEL, CEL's price fell.¹⁴¹¹ Given the volume of CEL that Celsius held and the fact that Celsius was the largest buyer of CEL, had Celsius tried to liquidate its CEL to fund the hole in its balance sheet (assuming it could have found buyers), the price likely would have fallen even faster and further than it did.

¹⁴¹⁰ As noted earlier in this Report, Mr. Tappen, Celsius's Coin Deployment Specialist, noted that "[Celsius] is the one inflating the price [of CEL] to get the valuations to be able to sell back to [Celsius]." Tappen, Dean, Slack (April 13, 2022), CEL-UCC-00083099 at 2.

¹⁴¹¹ Email Thread Re: "Liquidity & Funding / Financial Update - May 2022.pptx" (May 17, 2022), CEL-UCC-00551057.

No CEL was ever liquidated to address liquidity needs, even at the height of Celsius's liquidity crisis. As explained at Section X of this Report, in response to its liquidity crisis Celsius instead unwound other crypto investments that required a longer time to access, for many of which Celsius suffered financial losses, and ultimately instituted the Pause instead of attempting to sell CEL.

Finally, in the Spring of 2022, Celsius employees routinely commented that CEL was "worthless,"¹⁴¹² stating that its price "should be 0,"¹⁴¹³ that Celsius should "assume CEL is \$0 since we cannot liquidate our current CEL position,"¹⁴¹⁴ and questioning whether any party (other than Celsius itself) was purchasing CEL.¹⁴¹⁵ For all of these reasons, the Examiner has concluded that CEL held by Celsius (other than CEL held to meet customer obligations) was not a meaningful source of liquidity for Celsius.¹⁴¹⁶

3. Other Assets.

Celsius's records reflect other assets and businesses that might have value. These included the GK8 business, which was acquired in October 2021

¹⁴¹² Tappen, Dean, Slack (April 13, 2022), CEL-UCC-00083099 at 2.

¹⁴¹³ Perman, Jason, Slack (May 12, 2022), CEL-UCC-00092037 at 2.

¹⁴¹⁴ Tappen, Dean, Re: Weekly CEL Activities & P&L (05/07-05/13/2022), Email (May 18, 2022), CEL-UCC-00120671.

¹⁴¹⁵ Perman, Jason, Slack (May 11, 2022), CEL-UCC-00082725 at 2.

¹⁴¹⁶ With respect to CEL held to satisfy customer obligations, a direct one-to-one offset exists between the CEL assets on Celsius's balance sheet (the CEL tokens) and the customer liabilities on the balance sheet (the obligation to deliver those CEL tokens to its customers), irrespective of the price of CEL. Thus, CEL tokens held to satisfy customer obligations would not have an impact on liquidity unless there was a shortfall in CEL.

for a purchase price of approximately \$115 million,¹⁴¹⁷ and was recently sold by the bankruptcy estate for approximately \$44 million.¹⁴¹⁸

The other non-coin assets reflected on Celsius's financial statements could not be quickly liquidated and were not material sources of Celsius's liquidity that could be used to satisfy customer withdrawal requests during May and June 2022. As a result, the Examiner concludes that by May 2022, Celsius's only material source of liquidity was customer deposits that it was holding and the proceeds of deployments of those deposits.

IX. Review Of Where Crypto Assets Were Held Pre- and Post-Petition.

The Court directed the Examiner to investigate where Celsius's crypto assets were stored both pre- and post-petition. The Court directed the Examiner to investigate where Celsius's crypto assets were stored both pre- and post-petition. The Examiner does this in two ways. First, by distinguishing which Celsius entity Celsius has designated as the legal owner of its various crypto assets pursuant to an Asset Transfer Agreement between Celsius Network (UK) and Celsius Network (US) dated December 29, 2021, with an effective date of

¹⁴¹⁷ *Debtors' Statement in Support of Entry of the Order (I) Approving the Sale of the GK8 Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances, (II) Authorizing the GK8 Debtors to Enter into and Perform Their Obligations Under the Asset Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* dated December 12, 2022 [Dkt. 1671] at ¶ 3.

¹⁴¹⁸ *Declaration of Ryan Kielty in Support of Entry of an Order (I) Approving the Sale of the Debtors' GK8 Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances, (II) Authorizing the Debtors to Enter into and Perform Their Obligations Under the Asset Purchase Agreement, (III) Assume and Assign Certain Executory Contracts and Unexpired Lease, and (IV) Granting Related Relief* dated December 6, 2022 [Dkt. 1622] at ¶ 14.

August 19, 2021. Second, by noting where Celsius's crypto assets were located on two dates (March 30, 2022 and December 30, 2022) based on an analysis of Celsius's internal records including its wallet holdings (as reflected in the Fireblocks software) and Freeze Reports.

A. The Location Of Celsius's Crypto Assets Within The Corporate Family.

On a macro level, the migration of Celsius's customer-facing network business from Celsius Network (UK) to Celsius Network (US) in August 2021 impacted the location of Celsius's crypto assets within its corporate family.

1. The Migration.

From 2018 until the summer of 2021, substantially all of the assets or businesses of the Celsius group of companies ultimately would have been accessible to pay customer claims. Prior to the summer of 2021, all customer liabilities were recognized at the Celsius Network (UK) level, which was the top-tier operating company and the direct or indirect owner of all other Celsius businesses and investments. As a result, Celsius Network (UK) directly or indirectly owned all of the equity in Celsius Mining, as well as all other investments within the Celsius corporate chain.

In June 2020, Celsius Network (UK) applied for and was later granted a temporary crypto asset business registration by the United Kingdom's FCA.¹⁴¹⁹ On June 11, 2021, however, the FCA advised Celsius that it should withdraw its

¹⁴¹⁹ Celsius, Email re Temporary Registration Regime (December 16, 2020) CEL-UCC-00034004.

pending regulatory application and cease retail operations in the U.K.¹⁴²⁰ The FCA took the position that Celsius Network (UK)'s business amounted to an unregistered collective investment scheme under the U.K.'s Financial Services and Markets Act, 2010.¹⁴²¹

In reaction to the FCA's position, from July 22 until August 23, 2021, Celsius Network (UK) migrated all customer obligations arising from transactions on the Celsius App from Celsius Network (UK) to the newly-formed Celsius Network (US).¹⁴²² That migration was eventually memorialized in an Asset Transfer Agreement between Celsius Network (UK) and Celsius Network (US) dated December 29, 2021, with an effective date of August 19, 2021.¹⁴²³ Under that agreement, Celsius Network (US) accepted and assumed substantially all assets and liabilities related to transactions on the Celsius App.

However, not all customer assets were moved from Celsius Network (UK) to Celsius Network (US) as part of the migration. The assets associated with defi and staking strategies, as well as undeployed assets, were transferred to Celsius Network (US). But Celsius Network (US) lent—or more accurately, permitted Celsius Network (UK) to retain—billions of dollars of customer-related assets that were being deployed on exchanges or for institutional lending, so that Celsius

¹⁴²⁰ Cohen-Pavon, Roni, Letter to Financial Conduct Authority (June 11, 2021), CEL-UCC-00192896.

¹⁴²¹ Financial Conduct Authority, Re: ENF/UBD/PT/20756498, Letter (June 18, 2021) CEL-UCC-00192903.

¹⁴²² Celsius, Celsius Community Update – June 23, 2021 (June 23, 2021) <https://celciusnetwork.medium.com/celsius-community-update-june-23-2021-a28fca899091>.

¹⁴²³ Celsius, Asset Transfer Agreement (December 29, 2021), CEL_EXAM-00051261.

Network (UK) could continue to deploy them for Celsius Network (US)'s benefit.¹⁴²⁴ Thereafter, Celsius Network (UK) continued to engage in both existing and new deployment activities in these areas.

For legal and accounting purposes, the intercompany arrangement between Celsius Network (UK) and Celsius Network (US) pursuant to which Celsius Network (UK) continued to deploy crypto assets associated with the business that had migrated to Celsius Network (US) was characterized as a demand loan of crypto and fiat currencies from Celsius Network (US) to Celsius Network (UK) commencing August 19, 2021.¹⁴²⁵ That lending arrangement was memorialized in two undated agreements with an effective date of August 19, 2021.¹⁴²⁶

Even though the migration was concluded by August 2021, the intercompany arrangement between Celsius Network (UK) and Celsius Network (US) was not formally documented until more than four months later. In the interim, Celsius Network (UK) continue to deploy billions of dollars of crypto assets associated with the migrated business. Moreover, Celsius's management does not appear to have considered any corporate distinction in their decision-

¹⁴²⁴ Celsius, Intercompany Operation and Loan Agreement (dated effective August 19, 2021) CEL_EXAM-00000059; Celsius, Loan Agreement (dated effective August 19, 2021) CEL_EXAM-00028836.

¹⁴²⁵ Celsius, Intercompany Operation and Loan Agreement (dated effective August 19, 2021) CEL_EXAM-00000059; Celsius, Loan Agreement (dated effective August 19, 2021) CEL_EXAM-00028836.

¹⁴²⁶ Celsius, Intercompany Operation and Loan Agreement (dated effective August 19, 2021), CEL_EXAM-00000059; Celsius, Loan Agreement (dated effective August 19, 2021), CEL_EXAM-00028836.

making processes and deliberations when it came to coin deployment or liquidity. Rather, Celsius generally viewed coins available for deployment on a consolidated basis.

For example, the Waterfall reports which track the liquidity of crypto assets at the coin level do not include a field for corporate entity. The crypto assets continued to be deployed directly from the same Fireblocks workspaces (or in other words, the wallets in vaults in the Celsius Network (UK) workspace were not moved to vaults in the Celsius Network (US) workspace). That arrangement continues to this day.¹⁴²⁷ In more than 20 interviews conducted by the Examiner, no witness made any distinction between Celsius Network (UK) and Celsius Network (US) when describing crypto assets, their deployment, or liquidity. Mr. Mashinsky confirmed this during his interview, explaining that he looked at asset deployments and liquidity as an “overall” issue for Celsius, not an entity-by-entity issue.”¹⁴²⁸

2. Accounting For The Migration.

In connection with the migration, Celsius booked two sets of accounting entries transferring a total of \$21.4 billion in assets to Celsius Network (US). The first set of accounting entries related to the \$10.3 billion in crypto customer assets that were deployed with third parties at the time of the migration. Rather than unwinding those deployments or substituting Celsius Network (US) as the

¹⁴²⁷ *Public Coins and Budget Report* dated January 22, 2023 [Dkt. 1905] at 2 (reflecting \$1.29 billion in coins at Celsius Network (UK)).

¹⁴²⁸ Examiner Interview of Alex Mashinsky (Former Chief Executive Officer – Celsius, January 5, 2023).

counterparty, the deployed crypto assets remained with Celsius Network (UK). Thus, while Celsius Network (UK) booked an entry transferring \$10.3 billion in customer liabilities to Celsius Network (US), it did not book a transfer of the associated customer assets. Instead, Celsius booked an offsetting \$10.3 billion intercompany receivable due to Celsius Network (US) from Celsius Network (UK) that was recorded in the respective general ledgers of each company.¹⁴²⁹

In the second set of accounting entries, relating to the \$11.1 billion in DeFi assets, staked coins, and undeployed assets, Celsius booked a transfer of \$11.3 billion in crypto assets from Celsius Network (UK) to Celsius Network (US). In contrast to the accounting for the \$10.3 billion, however, Celsius only booked a \$3.6 billion offsetting payable due from Celsius Network (US) to Celsius Network (UK) relating to the \$11.3 billion in crypto liabilities transferred to Celsius Network (US), which was the cost basis for those customer liabilities. The remaining \$7.8 billion, which was the value associated with the appreciation of the crypto assets, was booked to equity.¹⁴³⁰

The accounting entries described above are consistent with what is reflected in the bankruptcy Schedules filed by the Celsius debtors, which reflect a large net intercompany payable from Celsius Network (UK) to Celsius Network

¹⁴²⁹ Celsius Network (US) and Celsius Network (UK) general ledgers.

¹⁴³⁰ Celsius Network (US) and Celsius Network (UK) general ledgers.

(US).¹⁴³¹ The Schedules further reflect that each of the Celsius entities is liable for all obligations to customers.¹⁴³²

Because of the manner in which the migration was accounted for, in theory as Celsius Network (US) satisfied customer obligations over time, the Celsius Network (US) intercompany receivable and Celsius Network (UK) intercompany payable should have been reduced. As a practical matter, however, it was impossible to tie customer redemptions to migrated assets, and thus the receivables and payables were not adjusted. As a result, Celsius Network (US)'s records reflect a multi-billion dollar asset in the form of an intercompany receivable from Celsius Network (UK), which does not accurately reflect the status of that account receivable.

The continued deployment of crypto assets by Celsius Network (UK) created further complications. Accounting entries were not made reflecting the hundreds if not thousands of individual transactions involving the deployment or unwinding of deployments. Instead, month-end adjustments to equity were made reflecting the overall changes in the value of assets deployed by Celsius Network (UK).¹⁴³³ Accounting for crypto asset transactions in this manner did

¹⁴³¹ *Schedules of Assets and Liabilities* dated October 5, 2022, *In re Celsius Network Ltd.*, Case No. 22-10966 [Dkt. 7] at pdf p. 45/321 (identifying \$9,093,663,742.78 "Intercompany and User Transfer Payable" to Celsius Network LLC).

¹⁴³² *Schedules of Assets and Liabilities* dated October 5, 2022 [Dkt. 974] at Ex. F-1 (scheduling retail customer claims); *Schedules of Assets and Liabilities* dated October 5, 2022, *In re Celsius Network Ltd.*, Case No. 22-10966 [Dkt. 7] at pdf p. 42/321 (scheduling "RETAIL CUSTOMER LIABILITIES - SEE SCHEDULE F-1 ON DEBTOR CELSIUS NETWORK LLC"); *Schedules of Assets and Liabilities* dated October 5, 2022, *In re Celsius Networks Lending LLC*, Case No. 22-10969 [Dkt. 5] at pdf p. 34/71 (same).

¹⁴³³ Celsius Network (US) and Celsius Network (UK) general ledgers.

not allow for an accurate accounting of the intercompany receivables and payables booked with respect to the migrated customer assets and liabilities.

According to Celsius's financial advisors, Celsius is updating and evaluating the stand-alone financial records of Celsius Network (US), including the manner in which the 2021 migration and subsequent "loan" transactions were booked and the manner in which any subsequent revenue from coin loan transactions was recognized and recorded on an intercompany basis. That evaluation is ongoing.

3. Celsius Network (US)'s Financial Condition.

The Examiner also investigated what impact the migration may have had upon customers, and whether Celsius Network (US) would have been able to meet its obligations to them following the migration.

The Examiner reviewed the stand-alone financial records of Celsius Network (US) to evaluate whether she could reach a conclusion about its financial condition. As a result of the financial record issues identified above, the Examiner determined that at this stage the stand-alone financial records of Celsius Network (US) are not sufficiently reliable or susceptible to a solvency analysis using a traditional adjusted net book value approach.¹⁴³⁴

¹⁴³⁴ Generally, a formal valuation of a business would involve the consideration of three standard valuation approaches: the Income Approach, Market Approach, and Cost Approach. In order to estimate a potentially reliable value using either an Income Approach or Market Approach, reliable historical information indicative of future performance and/or forward-looking earnings and cash flow metrics prepared as of each applicable valuation date would be necessary. As of the date of this Report, such historical information (if any existed) had not been made available for Celsius Network (US).

The Examiner has attempted to estimate Celsius Network (US)'s financial condition using an alternative methodology. The Examiner adjusted Celsius's consolidated financial records to eliminate any value attributable to the mining business, GK8 or other investments (none of which were owned by Celsius Network (US)), and to eliminate the tax reserve (which largely does not appear to relate to Celsius Network (US)'s business). The Examiner also removed 100% of the value attributable to Treasury CEL, which was initially issued and continued to be held by Celsius Network (UK) following the August 2021 migration and was never owned by Celsius Network (US).

Based on those adjustments, the Examiner estimates that as shown in the following table, and as explained in more detail in Appendix 19, Celsius Network (US) on a stand-alone basis has been insolvent since inception:

FIGURE 39: CELSIUS NETWORK (US) SOLVENCY ANALYSIS

	Q3 2021	Q4 2021	Q1 2022	Q2 2022
Celsius Network (UK) and Subsidiaries Net Equity / (Deficit) - Book Value	\$ 383,608	\$ (108,274)	\$ (330,455)	\$ (932,276)
<u>Elimination of Assets not Associated with Celsius Network (US)</u>				
Value Attributed to CEL Treasury	\$ (1,364,178)	\$ (1,227,339)	\$ (908,941)	\$ (178,525)
Value Attributed to Non-Treasury CEL in excess of CEL Liabilities	(168,756)	(227,161)	(193,076)	(63,243)
Book Value of Celsius Mining LLC, net of Intercompany	(297,643)	(446,733)	(608,829)	(622,355)
Book Value of GK8 Ltd., net of Intercompany	-	(4,044)	(2,539)	(1,395)
Book Value of Other Investments (Incl. Grayscale Trust)	(437,280)	(445,927)	(84,700)	(31,601)
	\$ (2,267,857)	\$ (2,351,204)	\$ (1,798,086)	\$ (897,118)
<u>Elimination of Liabilities not Associated with Celsius Network (US)</u>				
Celsius Network (UK) Deferred Tax Liability	\$ 349,250	\$ 352,006	\$ 352,006	\$ 352,006
Celsius Network (US) Adjusted Net Equity / (Deficit)	\$ (1,535,000)	\$ (2,107,472)	\$ (1,776,535)	\$ (1,477,388)

B. Crypto Assets By Type And Deployment.

As previously noted, Celsius did not adequately monitor its crypto assets or their deployment prior to the Freeze Report in May 2021. One of the purposes of the Freeze Report was to track in one place all of Celsius's crypto assets. The

Coin Stats worksheet on the Freeze Report summarizes Celsius's crypto assets and liabilities on a coin-by-coin basis.¹⁴³⁵

At all times, a significant portion of Celsius's crypto assets was deployed and controlled by third parties, including but not limited to coins Celsius posted as collateral with institutional lenders, delivered to DeFi platforms, deposited with exchanges (*e.g.*, Deribit, FTX, Bitfinex) in connection with trading strategies, or staked. Celsius informed the Examiner that it does not have knowledge of how these coins were held or used by the third parties, and the Examiner determined that it would be too costly and burdensome to the estate to conduct an investigation into the manner in which thousands of counterparties held coins that had been delivered to them in connection with deployments.

Crypto assets over which Celsius had control or direct access were and continued to be located in wallets controlled by Celsius. These wallets are managed using Fireblocks software in the following workspaces:

1. Celsius Network Ltd. (UK)
2. Celsius Network LLC (US)
3. Celsius Network EU UAB (LT)
4. Celsius Network Finance
5. Celsius – Custody Production
6. Celsius – DeFi (US)
7. Celsius OTC
8. Celsius Mining (US)

Each workspace contains multiple “vaults” and each vault contains one or more wallets. Fireblocks reports coin balances at the vault level, reporting both the amount of coins and the dollar value of those coins. According to Fireblocks

¹⁴³⁵ See Appendix 18.

data, Celsius’s Fireblocks workspaces contain approximately 1.2 million vaults holding more than 5.8 million wallets. Celsius could access both the coins in the wallets and reporting from Fireblocks regarding coin balances.

The Examiner analyzed the available Fireblocks data, on a workspace basis, for March 30, 2022 (the last pre-Pause quarter end) and December 30, 2022 (the last month prior to the filing of this Report). Explanatory notes on the Examiner’s methodology are found in Appendix 30. The below chart summarizes Celsius’s total assets and its on-platform/direct access assets (“Managed by Fireblocks”) as of March 30, 2022 and December 30, 2022.

FIGURE 40: ASSETS UNDER MANAGEMENT (FIREBLOCKS)

	Assets per Freeze Reports (\$USD billions)	
	Total Assets	Managed by Fireblocks
March 30, 2022	\$ 22.4	\$ 10.7
December 30, 2022	\$ 3.8	\$ 2.1

Note: This table reflects the AUM managed by Celsius using Fireblocks software, as compared to total AUM.

A summary of the coin and USD balances for March 30, 2022 and December 30, 2022 (as reflected in Fireblocks) is below:¹⁴³⁶

¹⁴³⁶ In its monthly operating reports filed with the Court, Celsius makes certain determinations regarding which Celsius entity it believes holds legal title to these coins. The Examiner’s analysis makes no such determinations. Instead, her analysis simply reflects how Celsius’s crypto assets are accounted for in Fireblocks.

FIGURE 41: FIREBLOCKS WORKSPACES 30/20/2022

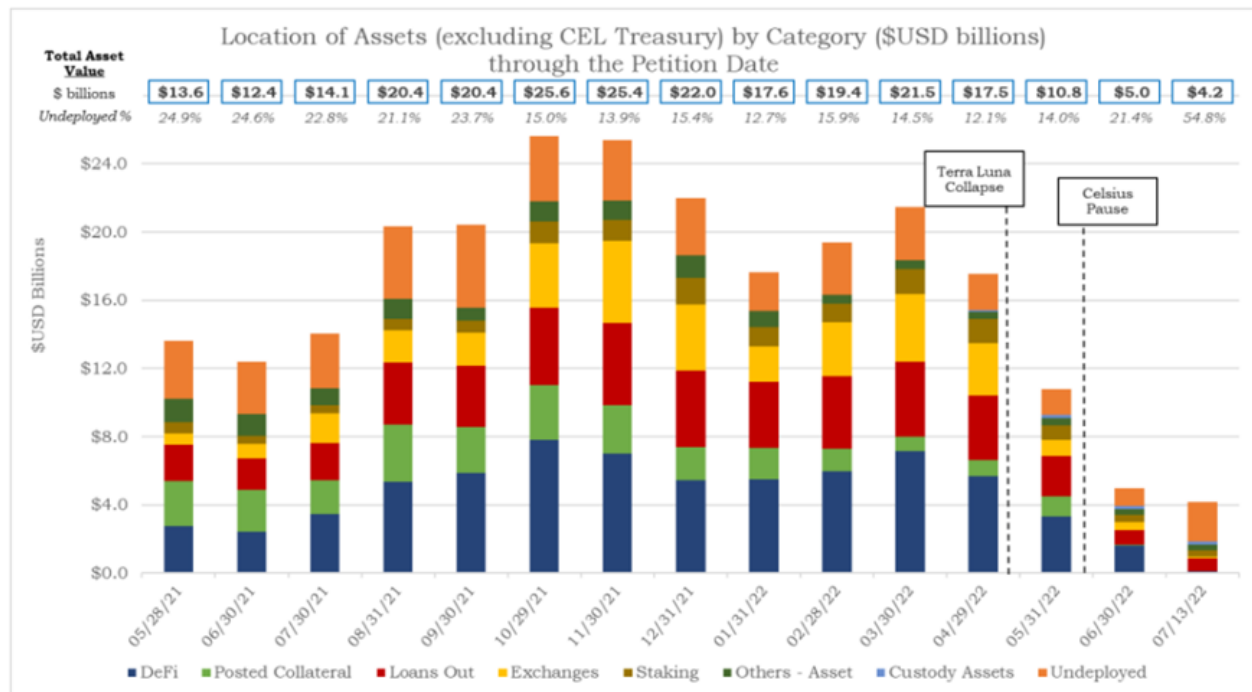
March 30, 2022 Total Coins (Quantity)					
Celsius Workspace	BTC Equivalent	ETH Equivalent	USD/Stable Coins	Other Coins	CEL
Celsius Network LLC (US)	2,143	138,547	31,413,911	778,958,391	285,748,852
Celsius Network Limited (UK)	3,357	3,295	147,466	8,853,130,461	348,830,931
Celsius - Custody Production	-	-	-	-	-
Celsius DeFi (US)	57,456	1,006,056	408,523,588	207,272,455	-
Celsius Mining (US)	211	-	-	-	-
Celsius Network EU UAB (LT)	-	100	-	10,220,346	-
Celsius Network Finance	-	9	1,157	1,652	207
Celsius OTC	24	91	2,102,301	1,949,334	18,212,297
	63,190	1,148,097	442,188,423	9,851,532,640	652,792,287

FIGURE 42: FIREBLOCKS WORKSPACES 12/30/2022

December 30, 2022 Total Coins (Quantity)					
Celsius Workspace	BTC Equivalent	ETH Equivalent	USD/Stable Coins	Other Coins	CEL
Celsius Network LLC (US)	489	11,585	5,635,170	1,089,253,651	270,043,556
Celsius Network Limited (UK)	32,027	2,250	21,356,192	8,894,793,363	368,898,338
Celsius - Custody Production	3,535	42,377	44,012,686	62,728,372	1,910,422
Celsius DeFi (US)	659	344,334	10,914,231	29,514,321	279,282
Celsius Mining (US)	104	0	439,211	-	-
Celsius Network EU UAB (LT)	-	86	74,053	1,305,896	379
Celsius Network Finance	-	22	1,827	156,409	207
Celsius OTC	-	0	101	161	15,003,171
	36,816	400,655	82,433,472	10,077,752,173	656,135,356

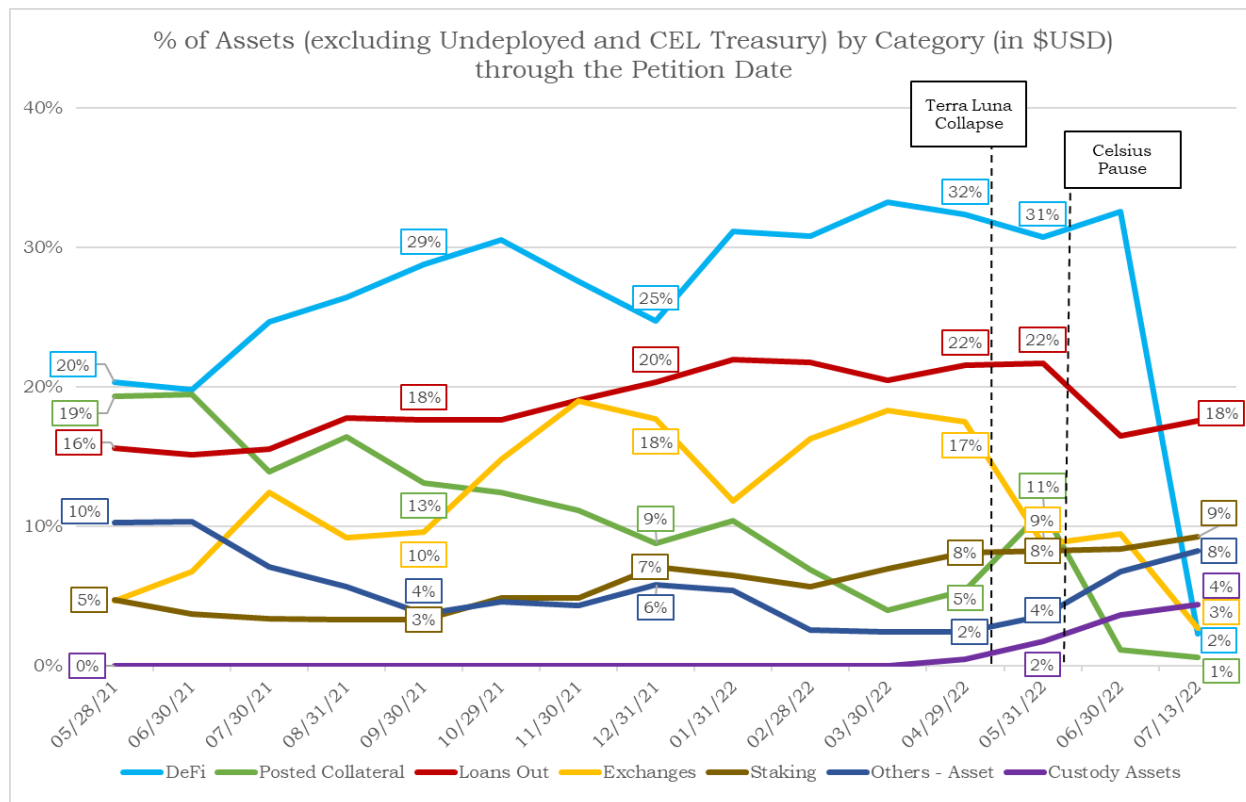
In addition, the following charts show how Celsius deployed its crypto assets from May 2021 through the Petition Date in total dollar values and by percentage of deployment strategy:

FIGURE 43: CRYPTO ASSETS BY CATEGORY (\$) – PRE-PETITION



Note: This chart reflects Celsius's crypto assets by category of use, in dollars, from May 2021 through the Petition Date.

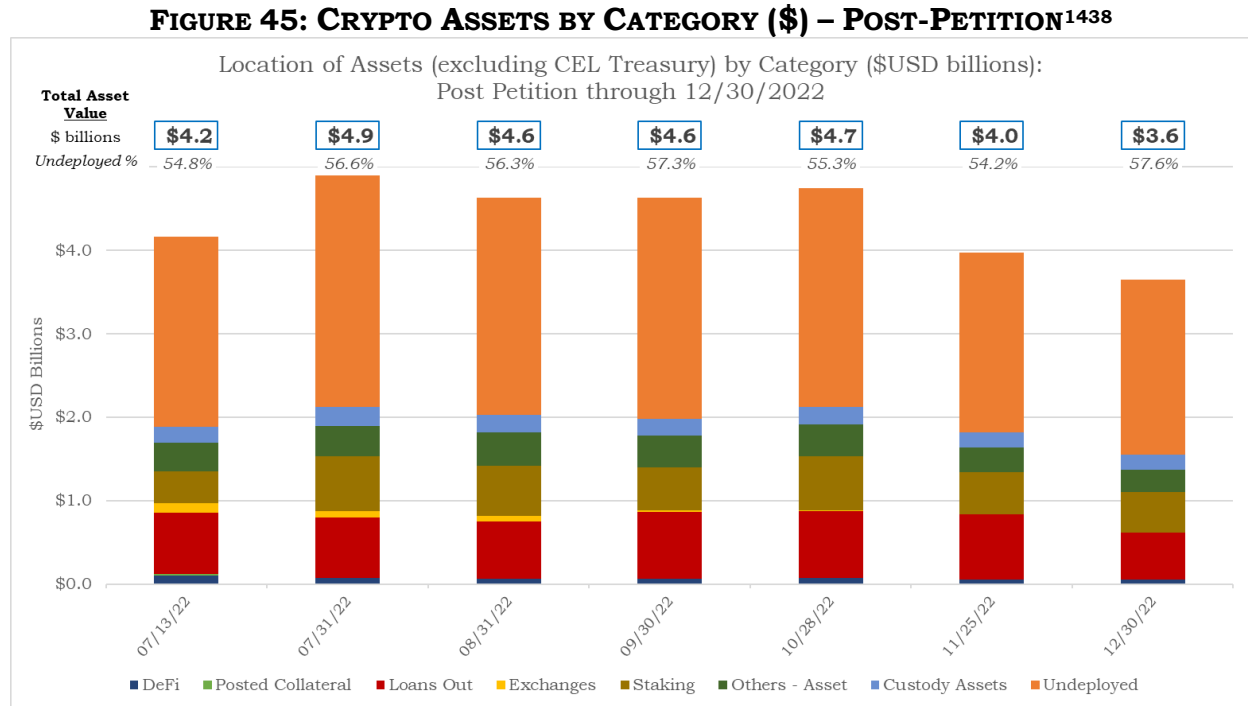
FIGURE 44: CRYPTO ASSETS BY CATEGORY (% AUM) – PRE-PETITION¹⁴³⁷



Note: This chart reflects the allocation of Celsius's crypto assets by category of use and as a percentage of total Celsius AUM, from May 2021 through the Petition Date.

Finally, the following charts show how Celsius deployed its crypto assets from the Petition Date through December 30, 2022, in total dollar values and by percentage of deployment strategy:

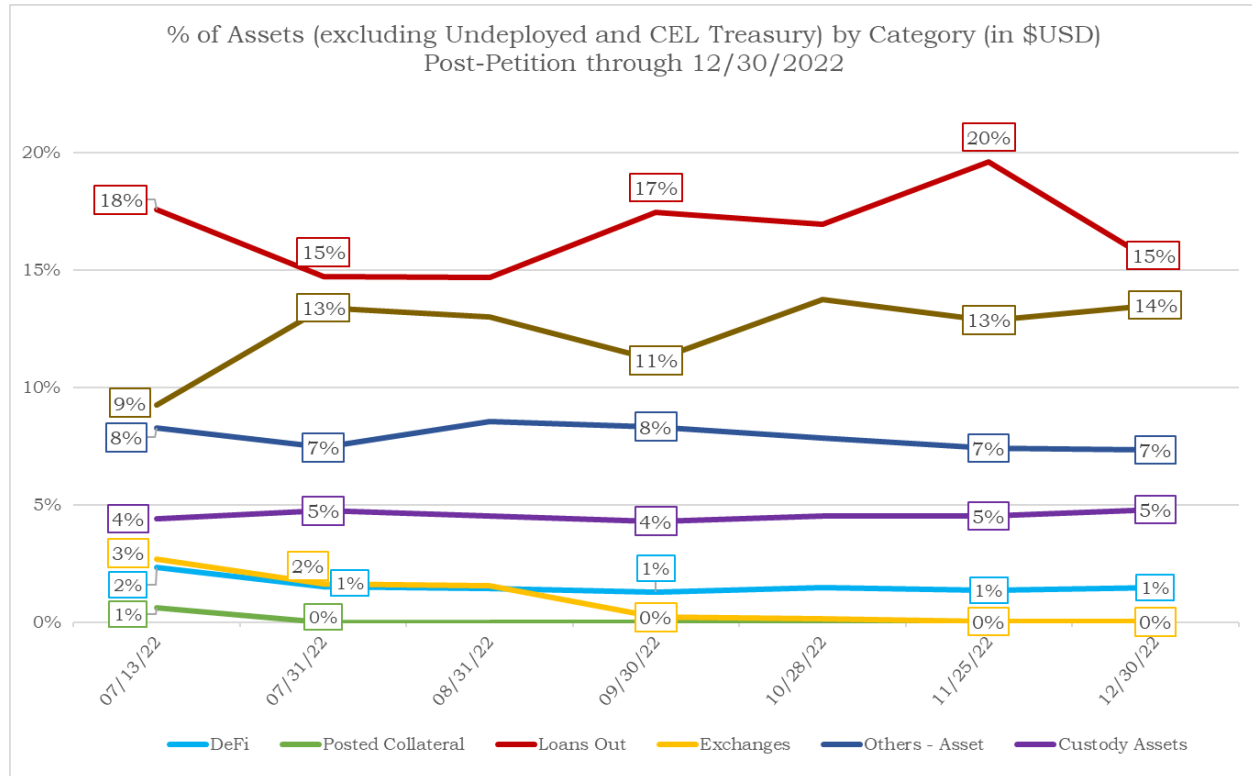
¹⁴³⁷ Coin Stats worksheets from Celsius Freeze Reports.



Note: This chart reflects Celsius’s crypto assets by category of use, in dollars, from May 2021 through the Petition Date.

¹⁴³⁸ Coin Stats worksheets from Celsius Freeze Reports.

FIGURE 46: CRYPTO ASSETS BY CATEGORY (% AUM) – POST-PETITION¹⁴³⁹



Note: This chart reflects Celsius's crypto assets, by category of use and as a percentage of total Celsius AUM, following the Petition Date.

Part Three: Celsius's Bitcoin Mining Utility Obligations.

I. Introduction.

The Examiner was tasked with investigating the “current status of the utility obligations of Celsius's Bitcoin mining business.”¹⁴⁴⁰ Her investigation revealed that Celsius Mining, the entity under which Celsius conducts its Bitcoin mining operations, is generally current on its utility bills (both those billed directly and those billed indirectly through third-party Bitcoin mining hosts) with two exceptions. First, Celsius Mining has disputed \$8,381,830 in post-petition

¹⁴³⁹ Coin Stats worksheets from Celsius Freeze Reports.

¹⁴⁴⁰ Order Directing Appointment of Examiner (September 14, 2022) (Dkt. 820) at 2.

amounts owed to one of its mining hosts. Second, Celsius Mining has not paid \$5,600,322 in costs incurred through its mining hosts before the bankruptcy filing. In total, Celsius Mining's unpaid utility-related bills were \$13,982,152.¹⁴⁴¹ Celsius Mining's mining hosts, however, hold prepayment balances totaling \$46,809,756 that may be available to offset Celsius Mining's obligations.¹⁴⁴²

II. Overview Of Celsius Mining's Operations.

A. Bitcoin Mining Background.

Bitcoin mining is the process of generating new blocks to be added to the Bitcoin blockchain. As detailed above, the Bitcoin blockchain maintains an unalterable distributed ledger of Bitcoin ("BTC") transactions. A block is a collection of data that contains a timestamp and other information about recent transactions. Bitcoin miners assemble blocks of transactions in exchange for which they receive a "reward" in BTC. The following example illustrates the steps involved for a block to be added to the Bitcoin blockchain:

- When User A initiates a transaction, information about the proposed transaction is broadcast to other computers operating the Bitcoin software (each such computer is referred to as a "node" of the Bitcoin network).
- Node operators can run a component of the Bitcoin software that validates received transaction messages and adds them to a queue called a mempool (short for memory pool), where the transactions will wait to be included in a block and added to the blockchain.

¹⁴⁴¹ See Appendices 25-28. The calculations of payment discrepancies in this Section do not include payment discrepancies of less than \$10. Throughout this Section, all dollar amounts are rounded to the nearest whole number. Calculations of amounts owed and paid are based primarily on Celsius Mining's books and records made available to the Examiner.

¹⁴⁴² Celsius Mining also has a credit with a third-party host for \$86,031 dating from August 2021, which does not appear have been applied to amounts since owed. See Appendix 25. This amount has not been included in this sum due to its age, but it, too, may be available to offset outstanding liabilities.

- Miners, which are a type of node, run another component of the Bitcoin software to assemble batches of transactions from the mempool and seek to create a block of transactions that will meet the Bitcoin software's strict criteria for a new block. If a miner creates a block that satisfies the criteria, it will broadcast that block to other nodes.
- Once a valid block is formed and broadcast to the network, other nodes will validate the block and add that block to their copy of the blockchain. Each block must contain a reference to the block that precedes it, so once a block is added to the chain, future miners will include a reference to that block in their proposed blocks.
- If more than one valid block is proposed by different computers on the network starting from the same preceding block, two branches of the chain can diverge, but as new blocks are added to each of those branches, the longer chain will be considered the valid one. As a result, once a sufficient number of subsequent blocks have been added to the chain, it is deemed sufficiently unlikely that a competing chain will emerge that transactions in the earlier block are deemed final.
- When the process is complete, User B will have received 1 BTC sent to them by User A, all nodes on the network will have agreed to the transaction using the consensus model incorporated into the Bitcoin software, and the Bitcoin miner that created the block will have earned a reward.¹⁴⁴³

A Bitcoin miner who successfully validates and proposes a block of transactions is rewarded with a pre-set amount of Bitcoin that is newly generated with each block, as well as potential transaction fees in an amount that

¹⁴⁴³ More information about the mining process is available at the following sources: Mining, bitcoindeveloper (accessed January 17, 2023), <https://developer.bitcoin.org/devguide/mining.html>; Protocol rules, Bitcoin Wiki (accessed January 17, 2023), https://en.bitcoin.it/wiki/Protocol_rules#cite_note-7, at n.7.

fluctuates based on network usage.¹⁴⁴⁴ After every 210,000 blocks, the reward for a block reduces by half. Currently, the reward is 6.25 Bitcoin per block.¹⁴⁴⁵

To maintain a relatively stable time between blocks, the Bitcoin software automatically adjusts, every 2,016 blocks or approximately every two weeks, the cryptographic criteria that must be satisfied to add a new block to the Bitcoin blockchain. These adjustments make mining more difficult when the total computing power devoted to mining Bitcoin across the whole network increases and less difficult when total computing power decreases.¹⁴⁴⁶ In other words, the more miners, the more difficult it becomes to mine a new block. Today, given the number of Bitcoin miners, generating a new, valid block is quite difficult. For example, on January 15, 2023, it was reported that Bitcoin mining difficulty had risen to an all-time high and that creating a new, valid block required an average of more than 37 trillion attempts.¹⁴⁴⁷

Bitcoin is mined using specialized computers known as application-specific integrated circuits (“ASICs” or “rigs”), which are designed for the sole purpose of performing the cryptographic calculation necessary for Bitcoin mining

¹⁴⁴⁴ Controlled supply, Bitcoin Wiki (accessed January 17, 2023), https://en.bitcoin.it/wiki/Controlled_supply.

¹⁴⁴⁵ Controlled supply, Bitcoin Wiki (accessed January 17, 2023), https://en.bitcoin.it/wiki/Controlled_supply.

¹⁴⁴⁶ Protocol rules, Bitcoin Wiki (accessed January 17, 2023), https://en.bitcoin.it/wiki/Protocol_rules#cite_note-7, at “Difficulty change.”

¹⁴⁴⁷ Redman, James, Bitcoin Network’s Mining Difficulty Rises to All-Time High, Making Block Discovery More Challenging, Bitcoin.com (January 15, 2023), <https://news.bitcoin.com/bitcoin-networks-mining-difficulty-rises-to-all-time-high-making-block-discovery-more-challenging/>.

(“hashing”).¹⁴⁴⁸ A miner may operate thousands of rigs from a datacenter, potentially sharing space in that datacenter with other miners’ rigs. The rigs can be operated largely remotely, although datacenters typically employ on-site staff to assist with the rigs’ installation, maintenance, and other upkeep.

Bitcoin mining consumes a substantial amount of energy. As of mid-2022, one source estimated that it takes 1,449 kilowatt hours (“kWh”) of energy—the equivalent of approximately 50 days of power for the average U.S. household—to mine a single Bitcoin.¹⁴⁴⁹ Electricity costs are therefore the primary driver of the fees a miner pays to its third-party hosts. Third-party mining hosts state their fees both in terms of the number of rigs to be hosted and those rigs’ energy usage; energy usage, in turn, is stated both in kilowatt hours and megawatt (“MW”) blocks of energy capacity. One megawatt is equal to 1,000 kilowatt hours.

Celsius Mining’s own costs illustrate the amount of energy required to mine. As discussed further below, Celsius Mining contracted with three third-party mining hosts. Through the host at which Celsius Mining deployed the fewest of its rigs, records show that Celsius Mining utilized between approximately 3 to 7.5 million kWh of electricity per month (or 3,000 – 7,500

¹⁴⁴⁸ Kim, Christine, The Rise of ASICs: A Step-by-Step History of Bitcoin Mining, CoinDesk (April 26, 2020, updated September 14, 2021), <https://www.coindesk.com/tech/2020/04/26/the-rise-of-asics-a-step-by-step-history-of-bitcoin-mining/>.

¹⁴⁴⁹ Gonzalez, Oscar, Bitcoin Mining: How Much Electricity It Takes and Why People Are Worried, CNET (July 18, 2022), <https://www.cnet.com/personal-finance/crypto/bitcoin-mining-how-much-electricity-it-takes-and-why-people-are-worried/>. How much electricity does an American home use?, U.S. Energy Information Administration (October 12, 2022), <https://www.eia.gov/tools/faqs/faq.php?id=97&t=3> (reporting that in 2021, the average monthly electricity consumption of a U.S. residential utility customer was 886 kWh per month).

MW),¹⁴⁵⁰ which is enough energy to charge 40,000 to 100,000 Teslas to full capacity or power 300 to 750 single family homes for a year.¹⁴⁵¹ The hosting fees Celsius Mining paid reflect its significant energy usage. From January through July 2022, Celsius Mining paid a total of between approximately \$3.3 million and \$7 million per month in hosting fees to its three hosts.¹⁴⁵²

In addition to contracting with third-party mining hosts, Celsius Mining has built and currently operates datacenters, a significant operating cost of which is energy. In September 2022, for example, Celsius Mining paid approximately \$319,000 for energy at just one of its self-operated mining facilities.¹⁴⁵³ The ability of a mining operation to obtain electricity at favorable rates and to mine Bitcoin at a speed that compensates for its utility costs is therefore crucial to revenue generation.

B. Celsius Forms Celsius Mining And Begins Mining.

As explained at Part One, Section XI.D.1 of the Report, Celsius entered the Bitcoin mining market in October 2020. That same month, Celsius Mining began mining by contracting with a third-party to piggy-back off of that third party's existing hosting agreements with Core Scientific, Inc., the entity that—through

¹⁴⁵⁰ See Figure 50.

¹⁴⁵¹ How Long Does It Take To Charge A Tesla? Learn Metrics (accessed January 9, 2023), <https://learnmetrics.com/how-long-does-it-take-to-charge-a-tesla/#:~:text=For%20standard%20outlet%20charging%2C%20you,from%200%25%20to%20100%25> (stating that Tesla batteries range from 50-100 kWh to fully charge); How much electricity does an American home use?, U.S. Energy Information Administration (October 12, 2022), <https://www.eia.gov/tools/faqs/faq.php?id=97&t=3> (stating that the average U.S. home uses between 10 and 11 MWh of energy annually).

¹⁴⁵² Celsius Mining, Hosting Costs by Site Spreadsheet (September 4, 2022).

¹⁴⁵³ Constellation Invoice 63659114901 (October 17, 2022).

January 4, 2023—was Celsius Mining’s primary third-party mining host.¹⁴⁵⁴

Between December 2020 and February 2022, Celsius Mining entered into a direct contract with Core Scientific, Inc., and also contracted with two new third-party-mining hosts: EZ Blockchain LLC and Luna Squares LLC.¹⁴⁵⁵ In the case of Core Scientific, Celsius Mining purchased rigs from its host. Under the other two contracts, Celsius Mining supplied its own rigs which it separately purchased. Each rig cost between approximately \$2,700 and \$5,000.¹⁴⁵⁶ Celsius Mining paid its hosts a monthly fee that included the utility costs necessary to operate the rigs, rather than being billed directly by the energy provider.

As of December 31, 2022, Celsius Mining had approximately 53,000 rigs deployed at third-party hosting locations, with approximately 40,000 of the rigs (75%) in operation.¹⁴⁵⁷ On December 21, 2022, Core Scientific filed its own chapter 11 case in the United States Bankruptcy Court for the Southern District

¹⁴⁵⁴ In October 2020, Celsius Mining contracted with Argo Blockchain to conduct mining through Core Scientific. Celsius Mining “piggy-backed” off of Argo’s existing contracts for rigs and hosting services with Core Scientific. Pursuant to Celsius Mining’s agreement with Argo, if Core Scientific terminated its agreement with Argo, Core Scientific would execute a contract with Celsius Mining on the same terms, which it did with Order 1-A, discussed below. Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, November 21, 2022).

¹⁴⁵⁵ Core Scientific Master Services Agreement (December 18, 2020); EZ Blockchain Hosting Agreement (January 27, 2022); Luna Squares Customer Equipment and Co-Location Agreement (February 23, 2022).

¹⁴⁵⁶ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-7, 9 (listing rig purchase prices of \$2,695 for Bitmain S19 rigs, \$2,799.53 for Bitmain S19j rigs, \$3,566.53 for Bitmain S19 PRO rigs, \$3,587.72 for Bitmain S19j PRO rigs, and \$3,923.90 for Bitmain S19 PRO rigs (from Order 9)); Section 341(a) Meeting of Creditors (October 13, 2022) (Ferraro stating that he believed that rigs sold at \$3,000 per rig were originally purchased at approximately \$5,000 per rig).

¹⁴⁵⁷ Celsius Mining, Daily Operating Report (December 31, 2022).

of Texas. Shortly after it filed for bankruptcy, Core Scientific obtained bankruptcy court approval to reject its hosting agreements with Celsius Mining.¹⁴⁵⁸ As a result, on January 3, 2023, Celsius Mining was required to power down approximately 38,000 rigs hosted at Core Scientific's facilities.¹⁴⁵⁹ Celsius Mining intends to redeploy 6,000 of those rigs at its recently developed self-owned and self-operated mining sites (discussed below) and 10,000 of those rigs at Luna Squares' facilities.¹⁴⁶⁰ Celsius Mining is also looking for new hosting opportunities.¹⁴⁶¹

In early 2022, Celsius Mining began developing four self-owned and self-operated mining facilities—known as Garden City, Rebel, Stiles, and East Stiles—all located in Midland, Texas (collectively, the “Midland sites”).¹⁴⁶² Three of these four sites are now operational.¹⁴⁶³ Approximately 18,000 rigs are located

¹⁴⁵⁸ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Order Authorizing Rejection of Executory Contracts with Celsius Mining, LLC (January 4, 2022), [Dkt. 232]].

¹⁴⁵⁹ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Celsius Mining LLC's Preliminary Objection to the Debtors' Emergency Motion for Entry of an Order Authorizing Rejection of Executory Contracts with Celsius Mining LLC (January 2, 2023) [Dkt. 211]]; Celsius Mining, Daily Operating Report (January 5, 2023) (showing one rig online at Core Scientific on January 4, 2023, out of the 37,540 rigs deployed there).

¹⁴⁶⁰ Hearing Transcript (January 24, 2023), at 23:25-24:11.

¹⁴⁶¹ Hearing Transcript (January 24, 2023), at 23:25-24:11.

¹⁴⁶² Priority Power Management Engineering, Procurement and Construction Management Agreement (March 21, 2022).

¹⁴⁶³ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022); Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023).

at the Midland sites, 82% of which (approximately 14,000) were operating as of January 4, 2023.¹⁴⁶⁴ Celsius Mining pays an energy provider directly for the energy supplied to these sites.

C. Celsius Mining's Declining Financial Performance.

According to former Celsius Chief Executive Officer Alex Mashinsky, Celsius began mining Bitcoin to diversify its yield because Celsius personnel involved in strategic decision-making saw mining as a means of generating significant returns.¹⁴⁶⁵ But as reflected in the discussion above at Part One, Section XI.D.1, mining returns have decreased significantly since Celsius Mining began its operations, and, in 2022, Celsius Mining's financial performance declined precipitously, as evidenced by the changes in its month-over-month gross margins.

Celsius Mining's gross margin, which it defines as revenue less hosting costs divided by revenue, declined from approximately 77% in January 2022 to approximately 25% by year end.¹⁴⁶⁶ On December 30, 2022, Celsius Mining utilized 57% of its deployed rigs to mine 14.3 Bitcoin, valued at \$238,631, with

¹⁴⁶⁴ Hearing Transcript (January 24, 2023), at 22:24-25; Celsius Mining, Daily Operating Report (January 4, 2023).

¹⁴⁶⁵ Examiner Interview of Alex Mashinsky (former Chief Executive Officer – Celsius, January 5, 2023).

¹⁴⁶⁶ Celsius Mining, Hosting Costs by Site Spreadsheet (received October 25, 2022); Celsius Mining, Daily Operating Report (December 31, 2022) (reflecting a 30-day average gross margin of 25.2% and a gross margin on December 30, 2022 of 20.9%). Section 341(a) Meeting of Creditors (August 19, 2022), at 65:22-66:1 (Ferraro confirming that the mining operation's margins have "gone from 75 percent to mid-30s"); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

hosting costs of \$188,767, representing a gross margin of 20.9%.¹⁴⁶⁷ Using Celsius Mining's gross margin definition and based on energy costs, mining difficulty and competition, and Bitcoin value, Celsius Mining employees estimated that its hosting costs had to be no more than approximately \$0.07 to \$0.08 per kWh of energy in late November/early December 2022 for Celsius Mining to break even.¹⁴⁶⁸ By way of comparison, in 2021, Celsius Mining would have broken even with hosting costs of up to \$0.40 per kWh.¹⁴⁶⁹

Moreover, estimating gross margin by simply deducting hosting costs from revenue does not factor in the additional costs associated with operating Celsius Mining, and therefore, results in higher calculated margins than other common conventions. Celsius Mining itself has employed more conservative estimates of its gross margin. For example, on May 13, 2022, Celsius Mining filed a draft Form S-1 with the Securities & Exchange Commission in connection with an anticipated but not consummated initial public offering for the mining business. In that S-1, Celsius Mining calculated gross profit (analogous to gross margin) by deducting from its total revenue, not just hosting costs, but also depreciation (*i.e.*, the cost of the rigs). Because Celsius Mining's capital expenditures were

¹⁴⁶⁷ Celsius Mining, Daily Operating Report (December 31, 2022).

¹⁴⁶⁸ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022) (stating that a hosting cost over \$0.08 per kWh would render Celsius Mining's rigs unprofitable); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022) (stating that the current breakeven price is close to \$0.07 per kWh); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022) (noting that the curtailment strike price at Garden City that Celsius currently employs is \$0.075 per kWh).

¹⁴⁶⁹ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

significant,¹⁴⁷⁰ any calculation of gross margins that does not take into account depreciation has the effect of artificially inflating Celsius Mining's gross margin and break-even utility rates.¹⁴⁷¹

As of December 31, 2022, Celsius Mining estimated that its costs per kWh at its three third-party sites were \$0.057 at Core Scientific, \$0.080 at Luna Squares, and \$0.090 at EZ Blockchain.¹⁴⁷² As a result, at then-current Bitcoin prices, Celsius Mining calculated, using its aforementioned revenue less hosting costs divided by revenue methodology, that it was profitable with a gross margin of 26.5% at Core Scientific but substantially less so at Luna Squares (6.3%).¹⁴⁷³ Celsius Mining was not operating any rigs at EZ Blockchain because it could not do so profitably.¹⁴⁷⁴ The day after Celsius Mining was required to power down its rigs at its most profitable hosting site, Core Scientific, Celsius Mining's overall

¹⁴⁷⁰ Celsius Mining, Draft Form S-1 Registration Statement (May 13, 2022), (CEL-UCC-00068471), at 19; Celsius Mining, Consolidated Profit and Loss Spreadsheet (December 31, 2022), at Tab "Mining" (identifying the year-to-date depreciation for 2022 as \$65.7 million, approximately half of total operating expenditures). Notably, Celsius Mining owned 123,590 rigs outright as of September 2022 but has determined that there is little market for these rigs. Celsius Mining, Rig Deployment Schedule Spreadsheet (September 7, 2022); Section 341(a) Meeting of Creditors (October 13, 2022) (Ferraro stating that the value of prepaid rigs cannot be realized through sale; Celsius sold mining equipment at approximately 60% realization); Notice of Sale of Certain De Minimis Assets (January 11, 2023) (Dkt. 1853) (noticing Celsius Mining's sale of rigs for \$476 - \$522 per unit).

¹⁴⁷¹ Deposition of Robert Campagna (Managing Director – Alvarez & Marsal, November 22, 2022), at 71:7-25 (stating that "the mining business ... becomes less economical" when considering the falling price of Bitcoin, rising energy prices, the capital costs associated with building out the Midland sites, and the taxes coming due on certain rigs).

¹⁴⁷² Celsius Mining, Daily Operating Report (December 31, 2022).

¹⁴⁷³ Celsius Mining, Daily Operating Report (December 31, 2022).

¹⁴⁷⁴ Celsius Mining, Daily Operating Report (December 31, 2022).

gross margin, even under its aggressive gross margin calculations, fell to 12%.¹⁴⁷⁵

As of January 4, 2023, Celsius Mining estimated that its costs per kWh at its Midland sites was \$0.07. On that date, utilizing approximately 82% of the rigs located at the Midland sites, Celsius Mining was generating a gross margin of 9.7% (based on Celsius Mining's aggressive gross margin calculation).¹⁴⁷⁶ Accounting for capital expenditures and non-energy operating expenses, however, a Celsius Mining employee responsible for overseeing the development of the Midland sites stated that, depending on the model used and on power and Bitcoin prices, the estimated break-even point for the Midland sites is two and a half to three years away.¹⁴⁷⁷

At a January 24, 2023 hearing, Celsius Chief Executive Officer Chris Ferraro reported that Celsius Mining was operating at a margin of 25% to 30% per day and expected a margin of approximately 25% for the month of January (presumably based on Celsius Mining's aggressive gross margin calculation).¹⁴⁷⁸

¹⁴⁷⁵ Celsius Mining, Daily Operating Report (January 5, 2023).

¹⁴⁷⁶ Celsius Mining, Daily Operating Report (January 5, 2023).

¹⁴⁷⁷ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022). Bolger, Rod, Email to Jason Perman re Liquidity & Funding / Financial Update – May 2022 (May 17, 2022), [CEL-UCC-00158441] (in comments on a May 2022 financial update document, Rod Bolger stating that the document should note that Celsius “Mining doesn’t currently add to capital/earns at [\$]30k given depreciation and other co[s]ts. Margins are essentially zero.”); Section 341(a) Meeting of Creditors (August 19, 2022), at 104:25-105:10 (Ferraro stating that he did not believe that “[a]t the current market levels . . . that the [\$1.2 billion equity] hole will be filled by the mining production.”).

¹⁴⁷⁸ Hearing Transcript (January 24, 2023), at 23:5-17.

III. The Status Of Utility Payments.

Based on the Examiner's review of Celsius Mining's books and records, interviews of its personnel, and information provided by its vendors, the Examiner found that Celsius Mining has not paid all of its utility and hosting costs—and in some instances disputes those charges. Figure 47 below details Celsius Mining's outstanding utility and hosting charges.

Celsius Mining has made prepayments to its hosts in the form of contractually stipulated prepayments, deposits, and prepaid monthly hosting estimates. As a result, Celsius Mining maintains prepayment balances with its mining hosts, as set forth in Figure 47. The hosts generally apply these balances against future monthly invoices for hosting services, although Celsius Mining's accounting records related to these prepayments lack the specificity and invoice-level detail typically expected in an accounts payable system.

FIGURE 47: CELSIUS MINING’S OUTSTANDING HOSTING CHARGES AND PREPAYMENT BALANCES¹⁴⁷⁹

Provider	Unpaid Amounts (including disputed)	Prepayment Balances & Unapplied Credits
Core Scientific	\$3,757,649 (pre-petition) \$8,381,830 (post-petition)	\$25,802,557 (prepayment balance) \$86,031 (unapplied credit)
EZ Blockchain	\$0	\$5,678,754 (prepayment balance)
Luna Squares	\$1,842,673 (pre-petition)	\$15,328,445 (prepayment balance)
Energy Providers for Midland Sites	\$0	N/A
Total	\$13,982,152	\$46,895,787 (prepayment balances & unapplied credit)
<i>Total Pre-Petition</i>	<i>\$5,600,322</i>	
<i>Total Post-Petition</i>	<i>\$8,381,830</i>	

What follows is an explanation of each of the third-party hosting relationships, as well as Celsius Mining’s utility arrangements for the Midland sites, and the unpaid charges and prepayment balances associated with each host and utility provider.

A. Core Scientific.¹⁴⁸⁰

1. Core Scientific-Celsius Mining Hosting Relationship.

Core Scientific was Celsius Mining’s first third-party mining host. Celsius Mining viewed its contract with Core Scientific as attractive because of its competitive—and what Celsius Mining allegedly interpreted as fixed—hosting

¹⁴⁷⁹ Appendices 25-28.

¹⁴⁸⁰ Core Scientific declined to meet with or provide documentation to the Examiner.

rate of approximately \$0.056 per kWh of energy.¹⁴⁸¹ Celsius Mining elected to purchase rigs through Core Scientific, in addition to procuring hosting services, believing it would benefit from wholesale pricing arrangements Core Scientific had with rig manufacturers.¹⁴⁸²

Core Scientific filed for bankruptcy on December 21, 2022, citing its disputes with Celsius Mining (described below) as one reason for its filing.¹⁴⁸³ On December 28, 2022, Core Scientific moved to reject all of its executory contracts with Celsius Mining.¹⁴⁸⁴ On January 4, 2023, the court granted that motion,¹⁴⁸⁵ relieving Core Scientific of any obligation to continue to perform under those agreements and resulting in Core Scientific powering down Celsius Mining's approximately 38,000 rigs.¹⁴⁸⁶ The court ordered that Core Scientific

¹⁴⁸¹ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Core Scientific Master Services Agreement (December 18, 2020), Orders 1-7 (listing a hosting rate of \$0.0556 per kWh); Debtors' Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶ 13 (describing Core Scientific's hosting rates as "fixed").

¹⁴⁸² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁴⁸³ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Core Scientific's Voluntary Petition Filing Bankruptcy (December 21, 2022) [Dkt. 1]]; Declaration of Michael Bros (December 21, 2022) [Dkt. 5], at ¶¶ 73-77].

¹⁴⁸⁴ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Core Scientific's Emergency Motion to Reject Executory Contracts with Celsius Mining LLC (December 28, 2022) [Dkt. 189]].

¹⁴⁸⁵ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Order Authorizing Rejection of Executory Contracts with Celsius Mining, LLC (January 4, 2023) [Dkt. 232]].

¹⁴⁸⁶ Celsius Mining, Daily Operating Report (January 5, 2023); *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Celsius Mining LLC's Preliminary Objection to the Debtors' Emergency Motion for Entry of an Order Authorizing Rejection of Executory Contracts with Celsius Mining LLC (January 2, 2023) [Dkt. 211]].

ready the rigs for shipment back to Celsius Mining and that Celsius Mining pick up the rigs by March 19, 2023.¹⁴⁸⁷

Core Scientific's rejection of its contracts with Celsius Mining left Celsius Mining with the right to assert a pre-petition breach of contract claim against Core Scientific. *See* 11 U.S.C. §§ 365(g) 502(g). While Core Scientific's agreements with Celsius Mining are no longer operative, the details of those agreements are still relevant to an examination of Celsius Mining's utility obligations as there are significant amounts claimed by the parties to be due under these agreements.

The rejected contracts consist of two Master Services Agreements ("MSAs")—the first dated December 18, 2020 ("2020 MSA") and the second dated December 3, 2021 ("2021 MSA")—and purchase orders issued under those MSAs ("Orders").¹⁴⁸⁸ Pursuant to the MSAs and related Orders, Core Scientific hosted Celsius Mining's rigs—some of which were purchased through Core Scientific—for set periods of time at Core Scientific's datacenters.

As described below in Figure 48, Celsius Mining issued ten Orders under the 2020 MSA, eight of which were partially fulfilled.¹⁴⁸⁹ Pursuant to Orders 1-

¹⁴⁸⁷ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Order Authorizing Rejection of Executory Contracts with Celsius Mining, LLC (January 4, 2023) [Dkt. 232]];

¹⁴⁸⁸ Core Scientific Master Services Agreement (December 18, 2020); Core Scientific Master Services Agreement (December 3, 2021).

¹⁴⁸⁹ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-9, 10.

Order 5 was executed and subsequently terminated because the rigs Celsius Mining purchased via Order 5 (4,000 Bitmain S19j rigs) became unavailable after the execution of Order 5. Order 5 was replaced with Order 9, which provided for Celsius Mining's purchase of 3,273 Bitmain S19 PRO rigs at a somewhat higher price. Core Scientific

4, 6-7 and 9, Celsius Mining purchased a total of 22,523 rigs from Core Scientific.¹⁴⁹⁰ These Orders provided that Core Scientific would deploy the purchased rigs at its facilities on a predetermined schedule for a two-year period, with start dates ranging from April 2021 to October 2021.¹⁴⁹¹ Order 10, executed in September 2021, provided for the two-year deployment of an additional 29,290 rigs supplied by Celsius Mining at Core Scientific's facilities.¹⁴⁹² Deployments under Order 10 were to occur in tranches with start dates that spanned from September 2021 to December 2022.¹⁴⁹³ As discussed below, Core Scientific last deployed Celsius Mining's rigs in May 2022. As a result of the contract rejection, Core Scientific will not be deploying the remaining rigs under Order 10.

Master Services Agreement (December 18, 2020), Order 9; Debtors' Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶ 9; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

Order 8 was executed but subsequently cancelled because the rig supplier with which Core Scientific contracted did not supply the promised rigs. Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022). Celsius Mining was refunded prepayments made pursuant to Order 8. See Appendix 25; Debtors' Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶ 9; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

¹⁴⁹⁰ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9 (the purchase included Bitmain S19 and S19 PRO rigs). Information on the rig models used by Celsius Mining is included throughout this report because this information is relevant to computations of power usage and hash rate.

¹⁴⁹¹ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9.

¹⁴⁹² Core Scientific Master Services Agreement (December 18, 2020), Order 10 (Bitmain M30S+ rigs).

¹⁴⁹³ Core Scientific Master Services Agreement (December 18, 2020), Order 10 at 1; Debtors' Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶ 11; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

Each Order specified a hosting services rate based on the price per kilowatt hour of energy.¹⁴⁹⁴ The hosting rate for Orders 1-4, 6-7 and 9 was \$0.0556 per kWh.¹⁴⁹⁵ Order 10 specified three different hosting rates, depending on deployment:¹⁴⁹⁶

- Rigs scheduled for deployment in September 2021 were to be hosted at a rate of \$0.0575 per kWh for the first 12 months and \$0.06 per kWh in the second year.
- Rigs scheduled for deployment in March 2022 were to be hosted at a rate of \$0.0593 per kWh for the first 12 months and \$0.06 per kWh thereafter.
- Rigs scheduled for deployment from April through December 2022 were to be hosted at a rate of \$0.0625 per kWh for the first 12 months and \$0.06 per kWh thereafter.

Celsius Mining issued one Order, Order 1-A, pursuant to the 2021 MSA. Had the contracts not been rejected, Order 1-A would have provided for a 14-month hosting term (December 7, 2021 through February 28, 2023) at a rate of \$0.047 per kWh for 4,378 rigs.¹⁴⁹⁷

¹⁴⁹⁴ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9-10.

¹⁴⁹⁵ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9.

¹⁴⁹⁶ Core Scientific Master Services Agreement (December 18, 2020), Order 10. Celsius Mining's consultants have explained that, while Order 10 specifies a hosting rate of \$0.00625 per kWh for first 12 months after the third deployment and \$0.6 per kWh thereafter, the Order's cited rates contained typographical errors and actually should read \$0.0625 per kWh and \$0.06 per kWh. Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (December 15, 2022).

¹⁴⁹⁶ Core Scientific Master Services Agreement (December 3, 2021), Order 1-A, at 1 (Bitmain S19 and S19 PRO rigs).

¹⁴⁹⁷ Core Scientific Master Services Agreement (December 3, 2021), Order 1-A, at 1 (Bitmain S19 and S19 PRO rigs).

FIGURE 48: CORE SCIENTIFIC ORDERS

Contractual Hosting Period	Order #	Rigs to Be Hosted	Assumed Energy Consumption per Rig	Hosting Rate (per kWh)
April 15, 2021 – April 15, 2023	Order 1	3,000 rigs (2,940 S19, 60 S19 PRO)	3.413 kWh	\$0.0556
May 15, 2021 – May 15, 2023	Order 2	3,500 S19 rigs	3.413 kWh	\$0.0556
June 15, 2021 – June 15, 2023	Order 3	3,500 rigs (3,000 S19, 500 S19 PRO)	3.413 kWh	\$0.0556
July 15, 2021 – July 15, 2023	Order 4	3,500 rigs (3,000 S19, 500 S19 PRO)	3.413 kWh	\$0.0556
Aug. 31, 2021 – Aug. 31, 2023	Order 9 (replaced Order 5)	3,273 S19 PRO rigs	3.413 kWh	\$0.0556
Sept. 15, 2021 – Sept. 15, 2023	Order 6	2,300 S19j rigs	3.255 kWh	\$0.0556
Sept. 20, 2021 – Sept. 20, 2023	Order 10	2,250 M30S+ rigs	3.57 kWh	\$0.0575 for first 12 months; \$0.06 thereafter
Oct. 15, 2021 – Oct. 15, 2023	Order 7	3,450 rigs (2,450 S19j, 1,000 S19j PRO)	3.255 kWh (S19j rigs) 3.15 kWh (S19j PRO rigs)	\$0.0556
Dec. 7, 2021 – Feb. 28, 2023	Order 1-A	4,378 rigs (4,111 S19, 267 S19 PRO)	3.413 kWh	\$0.047
Mar. 15, 2022 – Mar. 15, 2024	Order 10	3,530 M30S+ rigs	3.57 kWh	\$0.0593 for first 12 months; \$0.06 thereafter
Two-year deployments to begin monthly from April 15 - Dec. 15, 2022	Order 10	April 2022 - 4,710 M30S+ rigs May 2022 and monthly thereafter - 2,350 M30S+ rigs	3.57 kWh	\$0.0625 for first 12 months; \$0.06 thereafter ¹⁴⁹⁸

¹⁴⁹⁸ As noted above (see footnote 1496), there were typographical errors in Order 10 and the rates shown here are the actual rates charged.

Before the contracts were rejected, Core Scientific and Celsius Mining disputed whether Core Scientific could pass to Celsius Mining the increases in its actual energy costs.¹⁴⁹⁹ The operative provision of the 2020 MSA states that “if there are any increases, changes in, or introduction or administration of, any new taxes, levies, tariffs or governmental fees and charges with respect to the provision of Services, [Core Scientific] may, in its sole and absolute discretion, pass through all such amounts to [Celsius Mining] (“Increased Costs”) and [Celsius Mining] shall pay all Increased Costs” (the “Power Pass Through Cost Provision”).¹⁵⁰⁰

Core Scientific maintains that the Power Pass Through Cost Provision allows it to pass on increases in its power costs to Celsius Mining.¹⁵⁰¹ Celsius Mining disagrees. Its position is that Core Scientific may only pass through supplementary cost increases as a result of increases in energy costs.¹⁵⁰² According to Celsius Mining, Core Scientific’s attempt to pass through actual increases in energy costs “contravene[s] the fixed-price structure of the orders between the parties.”¹⁵⁰³ Because this dispute is in litigation, the Examiner does

¹⁴⁹⁹ Debtors’ Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917); Core Scientific’s Objection to Debtors’ Motion (October 19, 2022) (Dkt. 1140).

¹⁵⁰⁰ Core Scientific Master Services Agreement (December 18, 2020) § 4(f).

¹⁵⁰¹ Core Scientific’s Objection to Debtors’ Motion (October 19, 2022) (Dkt. 1140) ¶¶ 16-19, 69-76.

¹⁵⁰² Debtors’ Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶¶ 26-32.

¹⁵⁰³ Debtors’ Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶ 26; Debtors’ Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶¶ 27-32.

not express an opinion on the proper interpretation of the Power Pass Through Cost Provision and notes it only because this dispute has given rise to unpaid, disputed amounts.¹⁵⁰⁴

Under the MSAs and the attendant Orders, Core Scientific invoiced Celsius Mining monthly, in advance, for all expected, applicable fees.¹⁵⁰⁵ The expected fee amounts were calculated based upon the assumed power consumption per unit of each deployed rig, multiplied by the hosting rate associated with that Order.¹⁵⁰⁶ The next month's bill contained any adjustments based on differences between the estimated amounts invoiced in the preceding month and amounts owed for costs actually incurred, *i.e.*, energy actually utilized.¹⁵⁰⁷ As a result of this billing method, any variance between estimated and actual usage was resolved via a true up in the next month.

¹⁵⁰⁴ The 2021 MSA is substantially similar to the 2020 MSA, including the Power Pass Through Cost Provision. Core Scientific Master Services Agreement (December 3, 2021), at 1. Also now the subject of litigation is Order 10's requirement that Core Scientific notify Celsius Mining of additional hosting capacity and provide Celsius Mining priority access of up to 10 MW of additional power per month at a rate of \$0.0625 per kWh. Core Scientific Master Services Agreement (December 18, 2020), Order 10 at 4-5; Debtors' Motion to Enforce Automatic Stay and for Civil Contempt (September 28, 2022) (Dkt. 917) ¶¶ 12, 24, 41, 45; Core Scientific's Objection to Debtors' Motion (October 19, 2022) (Dkt. 1140) ¶¶ 4, 54-60, 68, 85-90, 98.

¹⁵⁰⁵ Core Scientific Master Services Agreement (December 18, 2020) § 3(a); Core Scientific Master Services Agreement (December 3, 2021) § 3(a).

¹⁵⁰⁶ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9-10; Core Scientific Master Services Agreement (December 3, 2021), Order 1-A.

¹⁵⁰⁷ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9-10; Core Scientific Master Services Agreement (December 3, 2021), Order 1-A.

Each Order also required Celsius Mining to prepay Core Scientific for the upcoming installation of rigs at its sites on a monthly basis.¹⁵⁰⁸ As a result of contractual prepayments and advance billing for estimated usage, at any point in time, Core Scientific often was holding more in advance payments from Celsius Mining than was due from Celsius Mining, making Celsius Mining a net creditor of Core Scientific.

2. Deployment History.

Core Scientific deployed Celsius Mining's rigs at six hosting sites located in Dalton, Georgia; Calvert City, Kentucky; Grand Forks and Marble, North Dakota; and Cottonwood and Denton, Texas.¹⁵⁰⁹ According to Celsius Mining, Core Scientific provided all promised hosting capacity under Orders 1-4, 6-7, 9 and 1-A but failed to timely complete deployment under Order 10, missing contracted deployment deadlines in the spring of 2022 and failing to deploy any Celsius Mining rigs after May 2022.¹⁵¹⁰

According to Core Scientific, the "deployment month" listed in Order 10 was simply a non-binding estimate of the month in which Celsius Mining was expected to deliver to-be-deployed rigs to Core Scientific, not a contractual

¹⁵⁰⁸ Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9-10; Core Master Services Agreement (December 3, 2021), Order 1-A.

¹⁵⁰⁹ Celsius Mining, Hosting Costs by Site Spreadsheet (received October 25, 2022).

¹⁵¹⁰ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

guarantee of actual deployment.¹⁵¹¹ Additionally, Core Scientific asserts that Celsius Mining knew of Core Scientific's limited hosting availability, ongoing construction of facilities, and need to deploy Core Scientific's own rigs purchased prior to Order 10, all of which made it challenging for Core Scientific to deploy Celsius Mining's rigs,¹⁵¹² and further asserts that Celsius Mining contributed to the delays.¹⁵¹³

In financial projections dated June 13, 2022, Celsius Mining forecasted that deployment delays at Core Scientific would result in an expected revenue shortfall of approximately \$73 million by year-end 2022.¹⁵¹⁴

3. Payment History And Outstanding Amounts Claimed.

As detailed in Appendix 25, Celsius Mining's books and records, coupled with information provided by Celsius Mining personnel, show that Celsius Mining has paid Core Scientific \$149,476,755 since January 14, 2021.¹⁵¹⁵ These payments generally include invoiced amounts for the purchase of rigs, contractual prepayments, and hosting prepayments and reconciliations for actual hosting capacity (*i.e.*, energy) used.¹⁵¹⁶

¹⁵¹¹ Core Scientific's Objection to Debtors' Motion (October 19, 2022) (Dkt. 1140) ¶¶ 27, 78-84.

¹⁵¹² Core Scientific's Objection to Debtors' Motion (October 19, 2022) (Dkt. 1140) ¶ 29.

¹⁵¹³ Core Scientific's Objection to Debtors' Motion (October 19, 2022) (Dkt. 1140) ¶¶ 30-33, 78.

¹⁵¹⁴ Bolger, Rod, Celsius Mining Operating Model (Base Case) (June 13, 2022), [CEL-UCC-00026681], at Tab "Core_Delay Analysis."

¹⁵¹⁵ Appendix 25.

¹⁵¹⁶ Appendix 25.

Celsius Mining withheld payment on Power Pass Through Costs demanded by Core Scientific for May through November 2022, totaling approximately \$7.6 million.¹⁵¹⁷ Celsius Mining also withheld payment of interest on these amounts, totaling \$172,528.¹⁵¹⁸ According to Core Scientific, until the contract rejection, it was covering approximately \$28,840 per day in power costs it claims Celsius Mining owed under the two MSAs and related Orders.¹⁵¹⁹

Starting in June 2022, Celsius Mining also withheld contractual prepayments for uninstalled rigs on the basis of Core Scientific's failure to deploy under Order 10's deployment schedule and has refused to pay \$4,210,470 in

¹⁵¹⁷ Appendix 25; Celsius Mining, Examiner Data Spreadsheet (December 27, 2022) (reflecting unpaid Power Pass Through Costs of \$7,553,572); Core Scientific's Objection to Debtors' Motion (October 19, 2022) (Dkt. 1140) ¶¶ 16-24, 39, 41-43; Core Scientific's Motion to Compel (October 19, 2022) (Dkt. 1144) ¶¶ 3, 6-7; Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (December 15, 2022) (explaining that in August 2022, Celsius paid the Power Pass Through Costs demanded but took a reciprocal credit from subsequent amounts owed). Core Scientific calculates the amount owed in Power Pass Through Costs as \$7,627,472. *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Core Scientific's Emergency Motion to Reject Executory Contracts with Celsius Mining LLC (December 28, 2022)] [Dkt. 189], ¶¶ 13 n.4, 22] (identifying "\$7.8 million" in unpaid Power Pass Through Costs including interest thereon, which totals \$172,528).

¹⁵¹⁸ Appendix 25; Celsius Mining, Examiner Data Spreadsheet (December 27, 2022); *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Core Scientific's Emergency Motion to Reject Executory Contracts with Celsius Mining LLC (December 28, 2022) [Dkt. 189], ¶¶ 13 n.4, 22]; Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

¹⁵¹⁹ *In re Core Scientific, Inc., et al.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex.) [Core Scientific's Emergency Motion to Reject Executory Contracts with Celsius Mining LLC (December 28, 2022) [Dkt. 189], ¶¶ 13 n.4, 11].

contractual prepayments since that date.¹⁵²⁰ A Celsius Mining representative stated that it withheld these prepayments because, by June 2022, it had fully paid for the capacity received and the additional prepayments were for capacity that Core Scientific was failing to provide.¹⁵²¹

As detailed in Figure 49 below, documents provided by Celsius Mining and publicly filed by Core Scientific reflect an unpaid balance of \$12,139,479:¹⁵²²

¹⁵²⁰ Appendix 25; Celsius Mining, Examiner Data Spreadsheet (December 27, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵²¹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁵²² See Appendix 25.

FIGURE 49: CORE SCIENTIFIC OUTSTANDING AMOUNTS CLAIMED

Order #	Invoice Date	Covered Period	Total Due	Balance Outstanding	Unpaid Cost Type
Order 2	July 6, 2021	June 2021	\$148,602	\$148,602	Sales Tax ¹⁵²³
Order 10	Invoice Not Provided	May 2022	\$1,244,003	\$1,244,003	Contractual Prepayment
Orders 1-4, 6-7, 9-10	July 15, 2022	May & June 2022	\$4,554,981	\$771,351	Power Pass Through Costs for May & June 2022
Order 10	Invoice Not Provided	June 2022	\$1,244,003	\$1,244,003	Contractual Prepayment
Orders 1-4, 6-7, 9-10	Aug. 16, 2022	July 2022	\$5,513,479	\$329,212	Including Power Pass Through Costs
Order 10	Invoice Not Provided	July 2022	\$574,155	\$574,155	Contractual Prepayment
Orders 1-4, 6-7, 9-10	Sep. 15, 2022	Aug. 2022	\$6,481,015	\$2,637,240	Power Pass Through Costs
Order 10	Invoice Not Provided	Aug. 2022	\$574,155	\$574,155	Contractual Prepayment
Orders 1-4, 6-7, 9-10	Oct. 17, 2022	Sep. 2022	\$4,986,605	\$1,505,940	Power Pass Through Costs
Order 10	Invoice Not Provided	Sep. 2022	\$574,155	\$574,155	Contractual Prepayment
Orders 1-4, 6-7, 9-10	Nov. 15, 2022	Oct. 2022	\$5,990,788	\$1,521,007	Power Pass Through Costs
Orders 1-4, 6-7, 9-10	Dec. 15, 2022	Nov. 2022	\$5,737,516	\$843,129	Power Pass Through Costs
Interest	Nov. 15, 2022	Aug. 27 – Nov. 14, 2022	\$97,890	\$97,890	Interest on overdue Power Pass Through Costs
Interest	Dec. 15, 2022	Nov. 15 – Dec. 14, 2022	\$74,637	\$74,637	Interest on overdue Power Pass Through Costs
Total				\$12,139,479	
<i>Total Pre-Petition¹⁵²⁴</i>				<i>\$3,757,649</i>	
<i>Total Post-Petition</i>				<i>\$8,381,830</i>	

¹⁵²³ Celsius Mining provided no evidence of payment for this invoiced amount but has not described this amount as disputed.

¹⁵²⁴ The amounts for the two July charges were distributed on a *pro rata* basis between the pre- and post-petition periods.

In total, Celsius Mining has not paid Core Scientific \$8,381,830 in post-petition charges, including: (1) \$6,709,091 in invoiced Power Pass Through Costs, (2) \$172,528 in interest demanded on those unpaid Power Pass Through Costs, and (3) \$1,500,211 in contractual prepayments to support future deployments.¹⁵²⁵ Celsius Mining also has not paid \$3,757,649 in pre-petition invoices, including Power Pass Through Costs for May and June 2022.¹⁵²⁶

4. Unapplied Prepayments And Credits.

Based on the Examiner's review of Celsius Mining's books and records, Core Scientific is holding \$25,802,567 in prepayments from Celsius Mining, which Core Scientific has not applied to Celsius Mining's outstanding invoices.¹⁵²⁷ Celsius Mining also has a credit with Core Scientific for \$86,031 dating from August 2021 that does not appear have been applied to amounts since owed.¹⁵²⁸

Celsius Mining has calculated its prepayment balance as \$21,522,513.¹⁵²⁹ The difference of \$4,280,054 is attributable to a timing discrepancy and a computational error. Celsius Mining's calculation does not take into account its

¹⁵²⁵ Appendix 25; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

¹⁵²⁶ Appendix 25; Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

¹⁵²⁷ Appendix 25.

¹⁵²⁸ Appendix 25.

¹⁵²⁹ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022) (stating that Core Scientific is holding approximately \$15-18 million in prepayments from Celsius Mining); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022) (stating that Core Scientific is holding approximately \$16 million in prepayments from Celsius Mining).

December 22, 2022 prepayment of \$4.7 million for January 2023, presumably because its calculation predated this payment. This understatement is partially offset by Celsius Mining overstating the prepayment balance attributed to a September 2021 invoice by approximately \$440,000.¹⁵³⁰

B. EZ Blockchain.¹⁵³¹

1. EZ Blockchain-Celsius Mining Hosting Relationship.

Between January and March 2022, Celsius Mining entered into three mining hosting agreements with EZ Blockchain.¹⁵³² Together, these three agreements provided Celsius Mining with approximately 35 MW of power—capacity for an estimated 10,785 rigs—over a term of 18 months at a variable rate.¹⁵³³ Celsius Mining turned to EZ Blockchain because, according to Celsius Mining, its business model involves identifying small blocks of power and being

¹⁵³⁰ The September 2021 invoice (Core Invoice 41995) includes both contractual prepayments for the rigs and “batch configuration fee[s].” Celsius Mining recorded the full amount of the invoice totaling \$10,736,252.50 as contractual prepayments, without segregating configuration fees, which the hosting agreements do not provide will be applied against future hosting invoices. Core Scientific Master Services Agreement (December 18, 2020), Orders 1-4, 6-7, 9-10 (specifying that contractual prepayments will be applied as credits against future monthly invoice for hosting services as they become due). Celsius Mining, Prepayments Spreadsheet (December 19, 2022).

¹⁵³¹ Following an initial conversation between counsel for the Examiner and counsel for EZ Blockchain, EZ Blockchain declined to meet with or provide records to the Examiner.

¹⁵³² EZ Blockchain Hosting Agreement (January 27, 2022); EZ Blockchain Hosting Agreement (February 22, 2022); EZ Blockchain Hosting Agreement (March 15, 2022).

¹⁵³³ EZ Blockchain Hosting Agreement (January 27, 2022); EZ Blockchain Hosting Agreement (February 22, 2022); EZ Blockchain Hosting Agreement (March 15, 2022).

able to quickly install its containers and begin mining.¹⁵³⁴ This was attractive to Celsius Mining given Core Scientific's deployment delays.¹⁵³⁵

Celsius Mining entered into its first hosting agreement with EZ Blockchain on January 27, 2022.¹⁵³⁶ The agreement provided for 14.9978 MW of power capacity for 18 months, representing an expected deployment of 4,485 rigs.¹⁵³⁷ Celsius Mining agreed to pay, on a monthly basis, EZ Blockchain's actual energy costs incurred in operating the Celsius Mining rigs "inclusive of all fees, costs, and taxes, including but not limited to transmission charges, demand charges, and delivery charges" plus \$0.03 per kWh.¹⁵³⁸ Upon contract execution, Celsius Mining paid a \$1,751,940 deposit to be credited back to Celsius Mining on a monthly basis over the term of the agreement and an \$875,970 prepayment to be applied to Celsius Mining's first month's invoice.¹⁵³⁹ Per the agreement, EZ Blockchain would invoice Celsius Mining monthly based on estimated energy usage, with a debit or credit on future invoices should actual energy usage differ from the estimate.¹⁵⁴⁰

¹⁵³⁴ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵³⁵ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵³⁶ EZ Blockchain Hosting Agreement (January 27, 2022), at 1.

¹⁵³⁷ EZ Blockchain Hosting Agreement (January 27, 2022), § 5.1, Schedule A (providing for deployment of MicroBT M30S, M30S+, and M30++Power rigs).

¹⁵³⁸ EZ Blockchain Hosting Agreement (January 27, 2022) § 2.4.

¹⁵³⁹ EZ Blockchain Hosting Agreement (January 27, 2022) § 2.5; Appendix 26.

¹⁵⁴⁰ EZ Blockchain Hosting Agreement (January 27, 2022) § 2.5.

Celsius Mining’s second and third hosting agreements with EZ Blockchain, executed on February 22, 2022, and March 15, 2022, provided for, respectively, 9.75 MW of power (capacity for 3,000 rigs) and 9.9 MW of power (capacity for 3,300 rigs) for a period of 18 months.¹⁵⁴¹ The terms of the February and March agreements generally mirrored those of the January 27, 2022 agreement, including its pass through (*i.e.*, variable) pricing.¹⁵⁴² Upon executing the second agreement, Celsius Mining paid a deposit of \$1,138,925 and a first month’s prepayment of \$569,462.¹⁵⁴³ Upon executing the third agreement, Celsius Mining paid a deposit of \$1,156,447 and a first month’s prepayment of \$578,223.¹⁵⁴⁴

Celsius Mining’s deposits and prepayments under each of the three hosting agreements are detailed in Figure 50, below.¹⁵⁴⁵

FIGURE 50: EZ BLOCKCHAIN HOSTING AGREEMENTS

Agreement Date	Capacity (rounded)	Deposit	First Month Prepayment	Total Due & Paid
Jan. 27, 2022	15 MW	\$ 1,751,940	\$ 875,970	\$ 2,627,910
Feb. 22, 2022	9.75 MW	\$ 1,138,925	\$ 569,462	\$ 1,768,387
Mar. 15, 2022	10 MW	\$ 1,156,447	\$ 578,223	\$ 1,800,670

¹⁵⁴¹ EZ Blockchain Hosting Agreement (February 22, 2022), § 5.1, at 1, Schedule A (providing for deployment of Bitmain S19pro rigs); EZ Blockchain Hosting Agreement (March 15, 2022), § 5.1, at 1, Schedule A (providing for deployment of Bitmain S19pro rigs).

¹⁵⁴² EZ Blockchain Hosting Agreement (February 22, 2022) § 2.4; EZ Blockchain Hosting Agreement (March 15, 2022) § 2.4.

¹⁵⁴³ EZ Blockchain Hosting Agreement (February 22, 2022) §§ 2.4, 2.5; Appendix 26.

¹⁵⁴⁴ EZ Blockchain Hosting Agreement (March 15, 2022) §§ 2.4, 2.5; Appendix 26.

¹⁵⁴⁵ See Appendix 26.

2. Deployment History.

EZ Blockchain deployed Celsius Mining-owned rigs at facilities in Georgia under the January 2022 and February 2022 agreements, with Celsius Mining utilizing, at peak, approximately 19 MW of the 35 MW in contracted hosting capacity.¹⁵⁴⁶ In July 2022, Celsius Mining directed EZ Blockchain to shut off Celsius Mining's rigs because energy prices in Georgia had risen to a point at which it became unprofitable to mine under a variable-rate contract.¹⁵⁴⁷ As documented in Figure 51 below, rates in June 2022 reached a high of \$0.15 per kWh.¹⁵⁴⁸ Due to high energy prices, Celsius Mining has not utilized any of the approximately 10 MW of capacity provided for under its March 2022 agreement with EZ Blockchain.¹⁵⁴⁹

The EZ Blockchain hosting agreements do not explicitly permit Celsius Mining to stop operating its rigs or terminate for convenience.¹⁵⁵⁰ The only termination right provided for in the agreements is a right to terminate if EZ

¹⁵⁴⁶ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); EZ Blockchain Hosting Agreement (January 27, 2022); EZ Blockchain Hosting Agreement (February 22, 2022).

¹⁵⁴⁷ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022 (explaining that EZ Blockchain shut off Celsius Mining's rigs in July 2022). Cf. Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022) (identifying the shutoff as having occurred in June 2022).

¹⁵⁴⁸ Appendix 26.

¹⁵⁴⁹ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁵⁰ EZ Blockchain Hosting Agreement (January 27, 2022); EZ Blockchain Hosting Agreement (February 22, 2022); EZ Blockchain Hosting Agreement (March 15, 2022).

Blockchain fails to cure a material breach.¹⁵⁵¹ According to Celsius Mining, however, EZ Blockchain agreed to turn off Celsius Mining's rigs and has not made a formal demand for payment since June 30, 2022.¹⁵⁵²

As of January 4, 2023, 5,416 Celsius Mining rigs remained offline at EZ Blockchain's facilities.¹⁵⁵³ Celsius Mining has since discovered, through its miner monitoring software, that EZ Blockchain has been using Celsius Mining's rigs to mine for EZ's own benefit, directing Bitcoin mined using Celsius Mining's rigs to its own wallets.¹⁵⁵⁴ As of early December 2022, Celsius Mining personnel did not report taking any action to stop this activity or to seek redirection of revenue earned through this mining to Celsius Mining.¹⁵⁵⁵

¹⁵⁵¹ EZ Blockchain Hosting Agreement (January 27, 2022) § 5.3; EZ Blockchain Hosting Agreement (February 22, 2022) § 5.3; EZ Blockchain Hosting Agreement (March 15, 2022) § 5.3.

¹⁵⁵² EZ Invoice 3082 (June 30, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022). Counsel for EZ Blockchain could not speak to whether EZ Blockchain had agreed to turn off Celsius Mining's rigs but stated that EZ Blockchain had so agreed for several other of its clients in Georgia. Examiner Call with EZ Blockchain's Counsel (November 11, 2022). EZ Blockchain has not responded to further requests for documents and information.

¹⁵⁵³ Celsius Mining, Daily Operating Report (January 5, 2023).

¹⁵⁵⁴ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁵⁵⁵ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022) (not indicating that Celsius Mining had done anything to stop this activity); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022 (same); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022) (same); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022) (same).

Celsius Mining and EZ Blockchain have discussed resuming operations under the hosting agreements.¹⁵⁵⁶ EZ Blockchain has made several offers to relocate Celsius Mining's rigs to hosting sites in Kansas or South Carolina and/or to lower its fee so that mining may resume.¹⁵⁵⁷ Celsius Mining has declined these offers but has discussed with representatives of EZ Blockchain the possibility of restarting the rigs and resolving the outstanding credit (discussed below) owed to Celsius Mining by applying the credit to cover future hosting services.¹⁵⁵⁸

3. Payment History.

According to Celsius Mining's books and records and Celsius Mining personnel, Celsius Mining owes no outstanding invoiced amounts to EZ Blockchain.¹⁵⁵⁹ As detailed below in Figure 51, Celsius Mining fully paid all invoices received from March 2022 through June 2022.¹⁵⁶⁰

¹⁵⁵⁶ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁵⁵⁷ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁵⁵⁸ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023) (stating that discussions had taken place as recently as January 6, 2023).

¹⁵⁵⁹ See Appendix 26; Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁵⁶⁰ See Appendix 26.

FIGURE 51: EZ BLOCKCHAIN PAYMENTS

Invoice Date	kWh	Rate	Hosting (kWh x Rate)	Less Deposit	Less Prepayment	Total Due & Paid
Mar. 23, 2022	6,985,330	0.0800	\$ 558,826	\$ (97,330)	\$ (476,946)	\$ -
Mar. 31, 2022	4,288,932	0.0816	\$ 350,046	\$ -	\$ (350,046)	\$ -
April 22, 2022	7,032,139	0.0800	\$ 562,571	\$ (97,330)	\$ (48,978)	\$ 416,264
April 30, 2022	7,478,820	0.1009	\$ 839,020	\$ -	\$ (558,826)	\$ 280,193
May 25, 2022	7,478,820	0.1122	\$ 839,020	\$ (97,330)	\$ -	\$741,690
May 31, 2022	7,453,051	0.1335	\$ 994,920	\$ -	\$ (562,571)	\$ 433,849
June 21, 2022	7,118,280	0.0800	\$ 569,462	\$ (63,273)	\$ (506,189)	\$ -
June 30, 2022	2,921,096	0.1513	\$ 441,935	\$ (63,273)	\$ -	\$379,863
Total						\$2,251,859

4. Unapplied Prepayments.

Based on the Examiner's review of Celsius Mining's books and records, EZ Blockchain is holding \$5,678,754 in prepayments.¹⁵⁶¹ Celsius Mining has calculated its prepayment balance as \$5,003,064.¹⁵⁶² The \$675,690 variance is primarily due to Celsius Mining's failure to account for its June 2022 prepayment and certain deposit credits.

¹⁵⁶¹ See Appendix 26. Because EZ Blockchain has not provided Celsius Mining an invoice reflecting actual hosting costs for July 2022 (the month Celsius Mining shut off its rigs), the prepayment balance cited here does not account for any actual hosting costs incurred in July 2022. Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022) (asserting that Celsius Mining is owed some *pro rata* amount of its prepayment for July 2022 given that actual usage was lower than expected due to the mid-month shutdown).

¹⁵⁶² Celsius Mining, Prepayments Spreadsheet (December 19, 2022). Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022) (stating that EZ Blockchain is holding approximately \$5 million in Celsius Mining prepayments).

C. Luna Squares LLC.

1. Luna Squares-Celsius Mining Hosting Relationship.

Celsius Mining secured hosting capacity from Luna Squares in early 2022 when Celsius Mining began having difficulty securing hosting capacity from Core Scientific.¹⁵⁶³ According to Celsius Mining personnel, Luna Squares was an attractive hosting opportunity because Celsius Mining viewed Luna Squares as charging reasonable hosting rates and being competent at quickly and economically building out infrastructure for mining, as it had a pipeline of sites it could build out.¹⁵⁶⁴

Celsius Mining and Luna Squares entered into a Customer Equipment Co-Location Agreement on February 23, 2022, for 90 MW of hosting capacity.¹⁵⁶⁵ The agreement provided for the deployment of 30,000 mining rigs in seven batches (of 2,000, 4,000, 6,000, 8,000, 5,000, and 5,000 rigs, respectively) for one-year terms to begin between March and July 2022.¹⁵⁶⁶ The last of Celsius Mining's rigs are therefore slated to roll off in July 2023.

In exchange, Celsius Mining agreed to pay a monthly rate equal to Luna Squares' power costs plus \$0.0116 per kWh for infrastructure plus a 10%

¹⁵⁶³ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁶⁴ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁶⁵ Luna Squares Customer Equipment and Co-Location Agreement (February 23, 2022) § 1.1, Addendum A. The agreement is erroneously dated February 23, 2021.

¹⁵⁶⁶ Luna Squares Customer Equipment and Co-Location Agreement (February 23, 2022), Addendum A.

operating margin.¹⁵⁶⁷ The agreement explicitly provides, however, that Luna Squares may unilaterally increase the hosting fee “[i]n the event of any change . . . that materially increases the costs or other terms of delivery of Services under this Agreement, including but not limited to electrical rate increases”¹⁵⁶⁸ Celsius Mining pays a monthly services fee based on expected power consumption, which is trued up in subsequent bills if actual power consumption exceeds the estimate.¹⁵⁶⁹

On February 23, 2022, Celsius Mining loaned \$20 million to Mawson Infrastructure Group, Inc. (“Mawson”), Luna Squares’ parent company, to finance development of Luna Squares’ hosting capacity.¹⁵⁷⁰ The note bears interest at a rate of 12% per year and comes due on August 23, 2023.¹⁵⁷¹ Celsius Mining immediately assigned that loan to Celsius Network (US).¹⁵⁷² Celsius

¹⁵⁶⁷ Luna Squares Customer Equipment and Co-Location Agreement (February 23, 2022), Addendum A.

¹⁵⁶⁸ Luna Squares Customer Equipment and Co-Location Agreement (February 23, 2022) § 3.4.

¹⁵⁶⁹ Luna Squares Customer Equipment and Co-Location Agreement (February 23, 2022) §§ 3.3, 3.4. While the agreement provides that Celsius Mining must pay an increased fee if actual consumption exceeds the Monthly Services Fee, the agreement does not provide that Celsius Mining will be credited if its actual consumption is lower than the advance payment.

¹⁵⁷⁰ Mawson Secured Promissory Note (February 23, 2022), at 4; Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁷¹ Mawson Warrant Agreement (February 23, 2022), at 1; Mawson Secured Promissory Note (February 23, 2022), at 1.

¹⁵⁷² Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

Mining and Mawson discussed Celsius Mining making a second \$20 million loan to Mawson in June 2022, but the loan was never made.¹⁵⁷³

2. Deployment History.

As of mid-December 2022, Celsius Mining had deployed approximately 19,000 rigs, of the total 30,000 contracted, at Luna Squares' facilities, utilizing approximately 60 MW of the contracted 90 MW of hosting capacity.¹⁵⁷⁴ By year end, however, Celsius Mining had nearly halved that number, with only approximately 10,000 rigs deployed at Luna Squares' facilities as of December 30, 2022.¹⁵⁷⁵ Celsius Mining further curtailed its mining at Luna Squares' facilities in Georgia in recent months due to increased power costs, meaning Celsius Mining opted not to operate its rigs when energy prices were too high to make mining profitable.¹⁵⁷⁶

As to the still-undelivered 30 MW of hosting capacity, Celsius Mining attributed the shortfall to a failure of one of Luna Squares' utility providers to provide the contracted energy to Luna Squares.¹⁵⁷⁷ Celsius Mining personnel

¹⁵⁷³ Mawson Secured Promissory Note (June 2022); Mawson Guaranty and Security Agreement (June 2022); Mawson Securities Purchase Agreement (June 2022); Mawson Memorandum of Understanding and Term Sheet (June 2022); Examiner Call with Mawson/Luna Squares (November 3, 2022).

¹⁵⁷⁴ Celsius Mining, Daily Operating Report (December 15, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁷⁵ Celsius Mining, Daily Operating Report (December 31, 2022).

¹⁵⁷⁶ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022) (stating that Celsius Mining has been fully curtailing at Luna Squares' Georgia site since October 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022) (stating that Celsius Mining has the ability to fully curtail under its agreement with Luna Squares).

¹⁵⁷⁷ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

report that Luna Squares is in the process of building a new substation in Pennsylvania and will be able to deliver the promised capacity when the work is complete.¹⁵⁷⁸ As of September 2022, Celsius Mining's internal rig forecast projected that it would have all 30,000 rigs deployed at Luna Squares' facilities by December 31, 2022.¹⁵⁷⁹ Luna Squares' representatives told the Examiner, however, that they are not inclined to deploy additional Celsius Mining rigs because Celsius Mining did not make the aforementioned second \$20 million loan.¹⁵⁸⁰

Celsius Mining's Chief Strategy Officer reported that the agreement with Luna Squares originally appeared favorable in part because Celsius Mining understood that Luna Squares' contractual relationship with its utility provider resulted in favorable power rates. Luna Squares' utility contract provided for 100 MW of power with 50 MW provided at a fixed rate and 50 MW provided at a spot (*i.e.*, variable) rate.¹⁵⁸¹ However, to take advantage of the favorable fixed rate, Luna Squares needed to utilize the full 100 MW of capacity.¹⁵⁸² Because the utility provider supplying one of Luna Squares' sites was ultimately unable to support the capacity initially expected, Celsius Mining has not been able to

¹⁵⁷⁸ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁷⁹ Celsius Mining, Mining Rig Deployment Schedule (September 8, 2022).

¹⁵⁸⁰ Examiner Call with Mawson/Luna Squares (November 3, 2022).

¹⁵⁸¹ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁸² Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

utilize sufficient capacity to benefit from the fixed-rate portion of Luna Squares' energy contract.¹⁵⁸³ The mining costs at Luna Squares, therefore, have been higher than Celsius Mining originally expected (in addition to its rig deployment being lower than expected).¹⁵⁸⁴

3. Payment History and Outstanding Amounts Owed.

According to Celsius Mining's and Luna Squares' books and records, as well as representations by Celsius Mining and Luna Squares personnel, Celsius Mining paid \$15.3 million in power deposits and \$8.9 million for hosting services.¹⁵⁸⁵

As documented in Figure 52, below, Celsius Mining has not paid two pre-petition invoices for hosting services in June and July 2022 totaling \$1.84 million.¹⁵⁸⁶ Celsius Mining does not dispute these invoices but has not paid them due to the intervening chapter 11 filing.¹⁵⁸⁷

¹⁵⁸³ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁸⁴ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁸⁵ Appendix 27.

¹⁵⁸⁶ Appendix 27.

¹⁵⁸⁷ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

FIGURE 52: CELSIUS MINING – LUNA SQUARES OUTSTANDING BALANCES

Invoice #	Invoice Date	Covered Period	Total Due	Balance Outstanding	Reason for Nonpayment
340	Invoice Not Provided	June 2022	\$1,297,457	\$1,297,457	Pre-Petition
356	Invoice Not Provided	July 1-12, 2022	\$545,216	\$545,216	Pre-Petition
Total				\$1,842,673	

4. Unapplied Prepayments.

Luna Squares also bills Celsius Mining for a monthly power deposit based on the number of rigs. Celsius Mining maintains, and Celsius Mining’s books and records confirm, that Luna Squares is holding \$15,328,445 in deposits.¹⁵⁸⁸

D. Celsius-Owned And -Operated Sites.

Since September 2022, Celsius has brought online three self-owned mining sites in Midland, Texas, and is finalizing development of a fourth site.¹⁵⁸⁹ Celsius Mining initiated development of these sites—retaining Priority Power Management (“PPM”) to assist with design and construction of the sites—to control its mining operations more directly and avoid paying the markup charged by third-party hosts.¹⁵⁹⁰ According to Celsius Mining, Texas, and particularly west Texas where the sites are located, is attractive for mining operations

¹⁵⁸⁸ See Appendix 27; Celsius Mining, Prepayments Spreadsheet (December 19, 2022).

¹⁵⁸⁹ Examiner Call with Priority Power Management (November 9, 2022); Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023).

¹⁵⁹⁰ Priority Power Management Energy Management and Consulting Services Agreement (September 28, 2021), Attachment A; Priority Power Management Engineering, Procurement and Construction Management Agreement (March 21, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

because the solar and wind power available in the area drives down energy prices.¹⁵⁹¹ Texas's deregulated energy market also allows energy purchasers to monitor real-time power usage and price, curtail power usage on an automated basis, and sell power back to the grid when doing so would be more economical than utilizing that power.¹⁵⁹²

At the first day hearing in these chapter 11 cases, on July 18, 2022, Celsius represented that Celsius Mining had “made significant investments in the construction of the [Midland] mining center and [was] currently rushing to complete the final aspect[s] of the center.”¹⁵⁹³ Celsius further stated that the Midland sites were expected to be completed in “approximately two months” (*i.e.*, mid-September 2022) and that “three areas [] are currently completed and [Celsius Mining is] working on the fourth.”¹⁵⁹⁴ In a July 14, 2022 declaration, Celsius consultant Robert Campagna stated that Celsius's mining center would be completed “in the coming weeks.”¹⁵⁹⁵ By September 2022, Celsius Mining projected it would have two sites operational by the end of September 2022, all four operational by the end of October 2022, and approximately 27,000 rigs mining across the four sites by the end of November 2022.¹⁵⁹⁶

¹⁵⁹¹ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁹² Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022).

¹⁵⁹³ First Day Hearing Transcript (July 18, 2022), at 87:20-24.

¹⁵⁹⁴ First Day Hearing Transcript (July 18, 2022), at 87:20-24; 93:7-8.

¹⁵⁹⁵ Declaration of Robert Campagna (Managing Director – Alvarez & Marsal, July 13, 2022) (Dkt. 22), ¶ 56.

¹⁵⁹⁶ Celsius Mining, Rig Deployment Schedule Spreadsheet (September 7, 2022).

However, Celsius Mining's development of these sites has been significantly delayed. Although the Garden City site (a 12 MW facility) began mining in mid-September 2022,¹⁵⁹⁷ the Rebel and Stiles locations (25 MW and 20 MW facilities, respectively) did not go online until mid-December 2022.¹⁵⁹⁸ As of January 9, 2023, the East Stiles site (a 30 MW site) was expected to be operational in the first quarter of 2023.¹⁵⁹⁹ And instead of the projected 27,000 rigs, as of January 4, 2023, Celsius Mining had only 17,646 rigs at its Midland sites, of which only 14,450 were online and mining.¹⁶⁰⁰ On January 4, 2023, the most recent date for which the Examiner received daily mining data, Celsius Mining mined 5.4 Bitcoin, valued at \$90,747.¹⁶⁰¹

¹⁵⁹⁷ Celsius Mining, Daily Operating Report (September 16, 2022) (the first of Celsius Mining's daily operating reports to identify the Celsius Mining-owned facility as operational and identifying \$1,426 in revenue from that site on September 15, 2022); Constellation Invoice 63659114901 (October 17, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022) (stating Garden City has been mining since September 2022).

¹⁵⁹⁸ Hearing Transcript (December 20, 2022), at 44:15-16. The number of rigs at the Midland sites increased significantly from December 14 (9,845 rigs) to December 16 (17,646 rigs). *Compare* Celsius Mining, Daily Operating Report (December 16, 2022) *with* Celsius Mining, Daily Operating Report (December 17, 2022). Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023) (stating that 7,656 rigs are online at the Rebel site and 6,390 rigs are online at the Stiles site).

¹⁵⁹⁹ Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023). Hearing Transcript (December 20, 2022), at 44:16-20; Examiner Call with Priority Power Management (November 9, 2022) (stating that PPM was, at the time, negotiating a right of way agreement between the landowner and Oncor and that mining was expected to begin at East Stiles in early Q1 2023); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022) (stating that construction at East Stiles was 60-65% complete and expected to be completed between Christmas and New Year's Day and that mining would begin in Q1 2023).

¹⁶⁰⁰ Celsius Mining, Daily Operating Report (January 5, 2023).

¹⁶⁰¹ Celsius Mining, Daily Operating Report (January 5, 2023).

1. The Midland Energy Contracts.

PPM acts as Celsius Mining's power broker for the Midland sites and brokers agreements between Celsius Mining and retail electrical providers ("REP").¹⁶⁰² An REP buys electricity at wholesale prices and sells it to the end user, acting as a middleman between the retail purchaser and the utility distribution company ("UDC") that owns the wires that allow for energy transmission to the customer site.

Under its agreement with Celsius Mining, PPM receives a commission of \$0.001 per kWh of energy it brokers.¹⁶⁰³ The REP collects this commission and remits it to PPM.¹⁶⁰⁴ The REP also collects payment for the UDC, which—in Celsius Mining's case—is Oncor Electric Delivery Company LLC ("Oncor").¹⁶⁰⁵

As detailed below and according to Celsius Mining's books and records, Celsius Mining had paid approximately \$13.7 million to its REPs and UDC and has no outstanding amounts owed.

¹⁶⁰² Examiner Call with Priority Power Management (November 9, 2022); Priority Power Management Energy Management and Consulting Services Agreement (September 28, 2021), Attachment A.

¹⁶⁰³ Priority Power Management Energy Management and Consulting Services Agreement (September 28, 2021) § 3; Constellation Energy Supply Agreement (July 11, 2022), at 9.

¹⁶⁰⁴ Examiner Call with Priority Power Management (November 9, 2022); Priority Power Management Energy Management and Consulting Services Agreement (September 28, 2021) § 3; Constellation Energy Supply Agreement (July 11, 2022), at 9.

¹⁶⁰⁵ Examiner Call with Priority Power Management (November 9, 2022); Constellation Energy Supply Agreement (July 11, 2022), at 1. *See, e.g.*, Constellation Invoice 63659114901; Mothership Invoice CelsGCY_1 (November 1, 2022) (TDSP Charges).

a. Constellation New Energy, Inc.

In July 2022, Celsius Mining contracted with REP Constellation NewEnergy, Inc. (“Constellation”) to provide energy to the Midland sites. The Constellation Power Purchase Agreement provided for a variable price for the supply of energy for 90 days from August 1, 2022, through October 30, 2022.¹⁶⁰⁶ Upon expiration of this agreement, Constellation declined to continue supplying energy to the Midland sites.¹⁶⁰⁷ According to Celsius Mining’s books and records, Celsius Mining has paid a total of \$570,657 to Constellation and has paid all invoices received.¹⁶⁰⁸

b. Mothership Incubator LLP.

To identify a successor REP to Constellation New Energy, PPM solicited bids through a competitive request for proposal process that was hampered by Celsius Mining’s chapter 11 process. PPM reported that it solicited approximately ten utility providers for bids, received approximately three bids, and was turned down by approximately seven providers.¹⁶⁰⁹ Notwithstanding the lack of bidding, one Celsius Mining employee described the terms of the resulting contract for Garden City as “decent” and observed that it allowed Celsius Mining to continue

¹⁶⁰⁶ Constellation Energy Supply Agreement (July 11, 2022), at 2, 9; Examiner Call with Priority Power Management (November 9, 2022).

¹⁶⁰⁷ Examiner Call with Priority Power Management (November 9, 2022) (stating that Constellation declined to bid during the RFP process); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022) (same).

¹⁶⁰⁸ See Appendix 28.

¹⁶⁰⁹ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

operating the Garden City site without a lag.¹⁶¹⁰ The employee attributed the lack of bidding to “risk management 101” given Celsius Mining’s status as a chapter 11 debtor.¹⁶¹¹

As a result of the bidding process, on October 31, 2022, Celsius Mining executed a contract with REP Mothership Incubator LLC (“Mothership”) for the provision of energy to the Garden City site for six months, from November 1, 2022, through April 2023.¹⁶¹² The contract provides for 10 MW of power at \$0.051 per kWh¹⁶¹³ and for up to an additional 2 MW of power at a spot (*i.e.*, index) price.¹⁶¹⁴ Celsius Mining prepaid the six-month block, remitting payments on October 31, 2022, and November 2, 2022, that totaled \$2,907,732.¹⁶¹⁵

As described below in Figure 53, the total contract price includes not only the prepaid block price, but also the index price on any excess usage (and minus

¹⁶¹⁰ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁶¹¹ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁶¹² Examiner Call with Priority Power Management (November 9, 2022); Mothership Master Electric Energy Sales Agreement (October 31, 2022); Mothership Garden City Transaction Confirmation (October 31, 2022).

¹⁶¹³ The originally quoted price of \$0.0498 per kWh was subject to a “block true-up,” resulting in a final price of \$0.051 per kWh. Mothership Garden City Transaction Confirmation (October 31, 2022), at 1; Mothership Invoice CelsGCY_1 (October 31, 2022); Mothership Invoice CelsGCY_1a (November 1, 2022); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁶¹⁴ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁶¹⁵ See Appendix 28.

the index price on any under usage), a \$0.0047 per kWh “addor” on all usage, and pass through charges.¹⁶¹⁶

FIGURE 53: MOTHERSHIP ENERGY CONTRACTS¹⁶¹⁷

Site	Capacity	Contract Price	Term	Amounts Due & Paid (Covered Period)
Garden City	12 MW (10 MW fixed-price block; option for additional 2 MW at spot price)	(Block Price [\$0.051/kWh] x Block Quantity [10 MW]) + (Index Price x Excess Usage) - (Index Price x Under Usage) + (Adder Charge [\$0.0047/kWh] x entire volume) + Pass Through Charges	Nov. 1, 2022 – April 30, 2023	\$2,907,732 (11/1/22-1/2/23) \$90,730 (1/3/23 – 2/2/23)
Rebel	25 MW	(Index Price x Usage) + (Adder Charge [\$0.0047/kWh] x all volume) + Pass Through Charges	Nov. 21, 2022 (estimated) – April 30, 2023	\$2,468,599 (11/21/22 – 1/23/23) \$5,505,426 (1/1/23 – 1/23/23)
Stiles	20 MW	(Index Price x Usage) + (Adder Charge [\$0.0047/kWh] x all volume) + Pass Through Charges	Nov. 21, 2022 (estimated) – April 30, 2023	\$1,975,059 (11/21/22-1/23/23) \$189,691 (1/24/23 – 2/28/23)
East Stiles	30 MW	No energy supply agreement in effect as of January 9, 2023		

¹⁶¹⁶ Mothership Garden City Transaction Confirmation (October 31, 2022), at 1.

¹⁶¹⁷ Mothership Master Electric Energy Sales Agreement (October 31, 2022); Mothership Garden City Transaction Confirmation (October 31, 2022); Mothership Rebel Transaction Confirmation (November 17, 2022); Mothership Stiles Transaction Confirmation (November 17, 2022); Appendix 28.

On November 17, 2022, as set forth in Figure 53, Celsius Mining entered into spot-price contracts with Mothership for 45 MW of power for the Rebel (25 MW) and Stiles (20 MW) sites with delivery provided for through April 30, 2023.¹⁶¹⁸ Amounts owed under these contracts are calculated as the index price on actual usage, plus a \$0.0047 per kWh “add-on” on all usage and pass through charges.¹⁶¹⁹ As of January 9, 2023, Celsius Mining paid \$10,138,775 for energy service at the Rebel and Stiles sites.¹⁶²⁰

As of January 9, 2023, Celsius Mining did not have an energy contract for the East Stiles site.¹⁶²¹

c. Oncor Electric Delivery Company LLC.

Oncor is Celsius Mining’s UDC in Midland.¹⁶²² In addition to ongoing payments to Oncor made through the REP, according to PPM, Celsius Mining made up-front payments to Oncor through PPM totaling approximately \$945,000.¹⁶²³

¹⁶¹⁸ Mothership Rebel Transaction Confirmation (November 17, 2022); Mothership Stiles Transaction Confirmation (November 17, 2022).

¹⁶¹⁹ Mothership Rebel Transaction Confirmation (November 17, 2022), at 1; Mothership Stiles Transaction Confirmation (November 17, 2022), at 1.

¹⁶²⁰ See Appendix 28.

¹⁶²¹ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022; Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023).

¹⁶²² Constellation Energy Supply Agreement (July 11, 2022), at 4; Examiner Call with Priority Power Management (November 9, 2022).

¹⁶²³ Examiner Call with Priority Power Management (November 9, 2022). PPM and Celsius employees generally considered this amount to be non-recoverable. Examiner Call with Priority Power Management (November 9, 2022) (stating that fees will not be credited back to Celsius Mining); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022) (doubting whether or not

2. Barber Lake.

In addition to the four sites discussed above, Celsius Mining has explored developing another site in Texas—in Barber Lake—which would be an additional 300 MW, self-owned and self-operated mining site.¹⁶²⁴ The development of the Barber Lake site is dependent on securing the approval of the Electric Reliability Council of Texas (“ERCOT”).¹⁶²⁵

Pursuant to a letter of intent with PPM (the “Letter of Intent”), Celsius Mining has paid PPM approximately \$17.6 million in deposits for the Barber Lake location, consisting of approximately \$7 million in development service broker fees, \$8.3 million as a deposit to Oncor, and \$2.35 million for the land itself, which PPM owns.¹⁶²⁶

Celsius Mining and PPM disagree about what portions of this deposit are refundable if Celsius Mining does not move forward with the Barber Lake

fees would be recoverable). Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022) (stating that Celsius Mining may recoup this sum if it demonstrate to Oncor its commitment to using the infrastructure).

¹⁶²⁴ Priority Power Management Letter of Intent – Barber Lake (February 17, 2022); Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022; Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁶²⁵ Examiner Interview of Quinn Lawlor (Chief Strategy Officer – Celsius Mining, November 21, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁶²⁶ Priority Power Management Letter of Intent – Barber Lake (February 17, 2022), at 2; Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

project.¹⁶²⁷ Celsius Mining's position is that all but a \$500,000 "Exclusivity Fee" is refundable.¹⁶²⁸ According to Celsius Mining, PPM takes a contrary position and considers only the \$8.3 million deposit to Oncor to be refundable.¹⁶²⁹

The operative provisions of the Letter of Intent state that the \$7 million development fee "is not refundable regardless of the payment schedule" "[o]nce the Development Fee Deliverables are fully satisfied and the Exclusivity Period has expired (such date being the 'Refund Expiration Date')." ¹⁶³⁰ The Letter of Intent specifies the Refund Expiration Date as March 31, 2022. The Letter of Intent also states that the deposits for the land and the Oncor deposit are refundable if Celsius Mining "elect[s] not to proceed with the Site" and "such election is made prior to the Refund Expiration Date." ¹⁶³¹ The Refund Expiration Date has not been extended and thus has passed. ¹⁶³²

¹⁶²⁷ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁶²⁸ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022); Priority Power Management Letter of Intent – Barber Lake (February 17, 2022), at 5.

¹⁶²⁹ Examiner Interview of David Albert (Chief Administration Officer – Celsius Mining, December 2, 2022).

¹⁶³⁰ Priority Power Management Letter of Intent – Barber Lake (February 17, 2022), at 4.

¹⁶³¹ Priority Power Management Letter of Intent – Barber Lake (February 17, 2022), at 4.

¹⁶³² Email from Alvarez & Marsal to the Examiner re Celsius Examiner Mining Document Requests (January 9, 2023).

Part Four: Celsius's Procedures For Paying Certain Taxes.

I. Introduction.

The Examiner's investigation into Celsius's "procedures for paying sales taxes, use taxes and value added taxes" uncovered significant tax compliance deficiencies. Celsius did not employ any dedicated tax professionals for the first three years of its existence. Once it established a tax department in June 2021, those professionals failed to institute the necessary systems and procedures to ensure that its operating subsidiaries complied with their use tax and value added tax ("VAT") obligations on a timely basis. The result is that Celsius Mining owed \$16.5 million in use taxes as of the Petition Date and may owe \$6.6 million in use taxes after the Petition Date. In addition, Celsius Network (UK) has reserved \$3.7 million for its potential VAT liability.¹⁶³³

Celsius Mining incurs significant use tax liabilities, primarily when deploying mining rigs that it purchased from foreign vendors that do not collect sales tax as part of the transactions and when there is no available tax exemption or exclusion. When Celsius Mining deploys those mining rigs (*i.e.*, starts operating the mining rigs), it must pay use tax to the jurisdiction in which the mining rigs will be operated. Celsius Mining also has the potential to incur additional use tax when it moves mining rigs from one jurisdiction to another.

¹⁶³³ Celsius's reference to sales tax collection obligations in paragraph 8 of the Debtors' Motion Seeking Entry Of Interim And Final Orders (I) Authorizing The Payment Of Certain Taxes And Fees And (II) Granted Related Relief dated July 14, 2022 [Dkt. 17] (the "Tax Motion") was in error. Celsius is not obligated to collect sales tax as part of its ordinary course business operations.

Both Celsius's tax professionals and Celsius Mining's management failed to develop appropriate systemized policies and procedures to track Celsius Mining's use tax obligations. Lior Koren (Vice President of Finance and Tax and Former Director of Global Taxation), the most senior tax professional at Celsius, stated that it was "unknown to [him]" how or why Celsius Mining did not apply for use tax exemptions on a timely basis.¹⁶³⁴ In addition, there is a demonstrable lack of coordination on the topic of use tax between Celsius's tax professionals, who are employed by Celsius, and Celsius Mining's management.

The Examiner's investigation revealed troubling inconsistencies between information and witness statements provided to the Examiner by Celsius's two remaining tax professionals, on one hand, and Celsius Mining's Chief Financial Officer and Chief Operating Officer, on the other hand. Celsius produced documents suggesting that Celsius's U.S. Senior Tax Manager, Jeff Morgan, was tasked with oversight of indirect taxes, including use tax, for all business entities since his hire date in December 2021.¹⁶³⁵ These documents included a chart describing the job functions of Mr. Morgan and other tax department personnel, along with emails Mr. Morgan sent and received on sales and/or use tax issues.¹⁶³⁶ Even though these documents predate June 2022, Mr. Morgan

¹⁶³⁴ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

¹⁶³⁵ *E.g.*, Email from Confluence on behalf of Vered Kaplan to Lior Koren (January 30, 2022), CEL_EXAM-00026135; Tax Department – Overview of Structure (December 2021), CEL_EXAM-00044676; US Tax Manager Job Description, CEL_EXAM-00178981.

¹⁶³⁶ *E.g.*, Email from Confluence on behalf of Vered Kaplan to Lior Koren (January 30, 2022), CEL_EXAM-00026135; Tax Department – Overview of Structure

repeatedly claimed that he was unaware of, and not responsible for, Celsius Mining's use tax obligations until June 2022.¹⁶³⁷ In contrast, Celsius Mining's Chief Operating Officer, Patrick Holert, and its Chief Financial Officer, Jenny Fan, stated that they were aware of the need to either pay use taxes or obtain an exemption and had been communicating with Celsius's tax professionals with respect to these issues long before June 2022.¹⁶³⁸

Mr. Morgan also did not appear to know how Celsius Mining tracked its use tax obligations. Mr. Morgan informed Celsius's counsel that certain emails and documents relevant to tracking use tax obligations did not exist and could not be produced to the Examiner. But during the Examiner's interviews of Celsius Mining officers, it became apparent that those tracking documents did exist, and they were subsequently produced.¹⁶³⁹

Celsius's lack of processes and general lack of coordination on tax issues resulted in Celsius Mining owing substantial use taxes for mining rigs it deployed

(December 2021), CEL_EXAM-00044676; US Tax Manager Job Description, CEL_EXAM-00178981; Email from Or Almog to Amir Chenchinski (December 9, 2021), CEL_EXAM-00015670; Email from Jeff Morgan to Jenny Fan (January 10, 2022), CEL_EXAM-00030202; Email from Lior Koren to Jenny Fan (March 14, 2022), CEL_EXAM-00015776; Email from Jenny Fan to Ella Yang (April 27, 2022), CEL_EXAM-00015773.

¹⁶³⁷ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁶³⁸ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁶³⁹ Following the Celsius Mining officers' interviews, additional documents were produced, on a rolling basis, to the Examiner beginning on December 10, 2022.

in 2022.¹⁶⁴⁰ Specifically, as of the Petition Date, Celsius Mining owed approximately \$16.5 million in outstanding 2022 use taxes in Georgia and Pennsylvania.¹⁶⁴¹ Celsius Mining also is in the process of evaluating its use tax liability for mining rigs deployed after the Petition Date in Texas.¹⁶⁴² Celsius Mining estimates that it may owe Texas as much as \$6.6 million in use tax and related charges, \$900,000 of which stems from its failure to timely pay those taxes.¹⁶⁴³

Although Celsius's deficient tax structures are most evident with respect to Celsius Mining's failure to pay use taxes or obtain appropriate exemptions, Celsius Network (UK) also failed to pay VAT for its operations in the United Kingdom between January 1, 2020, and July 31, 2021.¹⁶⁴⁴ Celsius has reserved approximately \$3.7 million for this potential liability but believes that the actual

¹⁶⁴⁰ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022); Tax Motion, ¶¶ 8; 14.

¹⁶⁴¹ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022); Tax Motion, ¶14.

¹⁶⁴² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁶⁴³ Celsius Mining LLC Estimated Texas Use Tax Due as of December 2, 2022 (December 2, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

¹⁶⁴⁴ Letter from Mazars to Celsius Network Limited (January 14, 2022); Letter from Mazars to Celsius Network Limited (April 6, 2022); Tax Motion, ¶14; Examiner Motion at ¶49(viii) (noting, as one of the bases for the appointment of an Examiner, that “the Debtors failed to provide information in their first day filings “as to why Sales, Use, and VAT taxes have not been paid or if the money to pay these taxes is currently held in escrow”).

VAT owed is approximately \$1.1 million.¹⁶⁴⁵ Celsius's failure to address its VAT obligations appears to stem from its lack of dedicated tax professionals prior to June 2021 and those professionals' initial focus, once hired, on the migration of Celsius Network (UK)'s customer business to Celsius Network (US).¹⁶⁴⁶

In an attempt to mitigate the effects of its process failures, Celsius Mining has taken steps after the Petition Date to reduce its use tax obligations in Georgia and Pennsylvania and its VAT obligations in the United Kingdom. In September 2022, Celsius Mining obtained sales and use tax exemption certificates in Georgia. Celsius's tax professionals have stated that they believe Celsius Mining's Georgia exemptions will be applied retroactively to all mining rigs it deployed in Georgia in 2022, which—subject to audit—would eliminate \$11.5 million of its 2022 use tax liability.¹⁶⁴⁷ In Pennsylvania, Celsius Mining is seeking a voluntary disclosure agreement—through which it would disclose its unpaid tax liabilities and negotiate a resolution of the unpaid taxes, penalties, and possibly interest—that might include retroactively applying exemptions to its \$5 million state use tax liability.¹⁶⁴⁸ Celsius Mining also is continuing to

¹⁶⁴⁵ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2023).

¹⁶⁴⁶ *Id.*

¹⁶⁴⁷ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁶⁴⁸ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 8, 2022); Examiner Interview of Nancy Flag (Managing Director – Ernst & Young, November 11, 2022).

evaluate its Texas use tax obligations with its outside advisors.¹⁶⁴⁹ Finally, Celsius is working with tax authorities in the United Kingdom to reduce its VAT liability.¹⁶⁵⁰

The Examiner did not uncover any facts suggesting that Celsius or any of its business entities willfully or intentionally failed to pay its tax obligations. What is apparent, however, is that Celsius Mining incurred significant tax liabilities from its mining rigs and has the potential to incur additional liability as it continues to deploy mining rigs, and that its historic lack of systems to properly account for and pay use tax liability continues. In sum, Celsius lacks the internal tax sophistication, policies and procedures, and channels for communication between its different business entities to properly execute its tax compliance function as it relates to use taxes.

¹⁶⁴⁹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 22, 2022).

¹⁶⁵⁰ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

II. Overview Of Sales And Use Taxes And VAT.¹⁶⁵¹

In the ordinary course of Celsius's business, Celsius does not collect sales tax from third parties.¹⁶⁵² Celsius pays sales tax on equipment, goods, and electricity it purchases from certain vendors.¹⁶⁵³ Celsius incurs VAT for its

¹⁶⁵¹ Although Celsius also pays payroll taxes, an examination of Celsius's procedures for paying these taxes was not part of the Examiner's investigative mandate. Following her appointment, the Examiner was advised that during the 341 Meeting of Creditors on August 19, 2022 (the "341 Meeting"), the Internal Revenue Service ("IRS") questioned whether there were "\$17 million" in unpaid payroll taxes. 341 Meeting Tr., at 85-86. To determine whether there were significant unpaid payroll taxes, the Examiner reviewed the IRS's proofs of claim, including its amended claim, and interviewed Douglas Smith, the attorney for the IRS who appeared at the 341 Meeting. Proof of Claim No. 1497 (Case Number 22-10965-MG, August 8, 2022), amended by Proof of Claim No. 9527 (Case Number 22-10965-MG, September 29, 2022); Examiner Interview of Douglas Smith (Attorney – IRS, December 18, 2022). The IRS's amended claim did not assert any unpaid payroll taxes. Proof of Claim No. 9527 (Case Number 22-10965-MG, September 29, 2022). Mr. Smith confirmed that the IRS amended its original claim after verifying that Celsius used a third-party payroll provider, Insperity PEO Services, L.P. ("Insperity"), and that Insperity had properly reported and paid all payroll taxes on behalf of Celsius as Celsius's Professional Employer Organization ("PEO"). Examiner Interview of Douglas Smith (Attorney – IRS, December 18, 2022).

Celsius produced copies of six letters from Insperity (the "Insperity Letters") confirming that Insperity (a) is a PEO that served or is serving as the employer of record for payroll tax purposes for Celsius Network Inc. (for payroll period beginning March 1, 2018 through October 6, 2021), Celsius Network LLC (for payroll period beginning on either July 9, 2021 or September 11, 2021 (two separate dates were provided in the letters)), and Celsius Mining (for the payroll period beginning November 29, 2021); and (b) submits all applicable taxes and returns under its own Employee Identification Number. Letter from Insperity to Celsius Network Inc. (August 29, 2022); Letter from Insperity to Celsius Network LLC (August 29, 2022); Letter from Insperity to Celsius Mining (August 29, 2022); Letter from Insperity to Celsius Network Inc. (October 28, 2022); Letter from Insperity to Celsius Networks [sic] LLC (October 28, 2022); Letter from Insperity to Celsius Mining (October 28, 2022). Based on this investigation, the Examiner concluded that there were no material unpaid payroll taxes and that it was unnecessary to expand the scope of her tax investigation to address payroll taxes.

¹⁶⁵² Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁶⁵³ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

operations in the United Kingdom.¹⁶⁵⁴ Most significantly, Celsius Mining incurs substantial state use tax liability when it deploys mining rigs or uses taxable property for which sales tax was not collected by the vendor.¹⁶⁵⁵

A. Sales And Use Taxes.

Sales and use taxes are indirect consumption taxes imposed by states and localities (but not the federal government) on the retail sale and purchase of certain goods and services.¹⁶⁵⁶ Sales and use tax are two distinct taxes, representing both sides of a sale and purchase transaction.¹⁶⁵⁷

Each state and local jurisdiction that imposes a sales or use tax has its own statutory scheme for imposing such taxes. In general, those rules provide that sales of tangible personal property and certain services are subject to sales and use tax unless an exemption or exclusion applies, creating a taxing scheme that ensures either a sales or use tax is paid on each taxable transaction.¹⁶⁵⁸

Generally, sales tax is collected by those in the business of making retail sales of tangible personal property and certain identified services for the privilege of making such sales.¹⁶⁵⁹ Sales tax is collected by the vendor from a purchaser

¹⁶⁵⁴ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁶⁵⁵ *Id.*

¹⁶⁵⁶ Jerome R. Hellerstein and Walter Hellerstein, *State Taxation*, ¶12.01 (Warren, Gorham & Lamont, 3d ed. 1998, rev. 2022).

¹⁶⁵⁷ *Id.* at ¶16.01.

¹⁶⁵⁸ *Id.* at ¶¶12.01, 12.04.

¹⁶⁵⁹ *Id.* at ¶¶12.01, 16.01.

at the point of sale and remitted to the state or local jurisdiction.¹⁶⁶⁰ Payment of the tax to the vendor resolves all liability of the purchaser for making payment of the use tax directly to the state.¹⁶⁶¹

Use tax is the flip side of the sale transaction. Use tax is generally the tax paid by the purchaser for the privilege of making a purchase of tangible personal property or identified services.¹⁶⁶² Determining whether use tax is due depends on the jurisdiction in which the purchase was made, where use of the property will occur, and whether there are any available exemptions or exclusions based on the type of property or service purchased or type of sales transaction.¹⁶⁶³ When a taxable transaction occurs because there is no available exemption or exclusion, yet the vendor fails to collect sales tax, the purchaser is obligated to self-assess and pay the use tax directly to the state or local taxing jurisdiction.¹⁶⁶⁴

Sales and use tax exemptions or exclusions vary by jurisdiction based on the type of property or service purchased, or the use to be made of the property or service. Celsius Mining incurs use tax liability on the purchase of mining equipment.¹⁶⁶⁵ Two categories of exemptions are most applicable to these

¹⁶⁶⁰ *Id.* at ¶12.01.

¹⁶⁶¹ *Id.* at ¶16.01.

¹⁶⁶² *Id.*

¹⁶⁶³ *Id.*; *Id.* at ¶18.02.

¹⁶⁶⁴ *Id.* at ¶16.01.

¹⁶⁶⁵ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

purchases: (i) exemptions on the purchase of qualifying data center equipment; and (ii) exemptions on the purchase of manufacturing equipment.¹⁶⁶⁶

Exemptions from sales and use taxes are typically qualified in numerous ways. State or local statutes may specify or limit what types of equipment qualify for the exemption (*e.g.*, data center equipment), including investment thresholds and investment periods (*e.g.*, investing a certain amount of money in establishing a new data center and/or hiring a certain number of new employees).¹⁶⁶⁷ Some exemptions can be applied to all sales made in a year, regardless of the specific date on which a taxpayer obtains a certificate of exemption,¹⁶⁶⁸ while others might only apply after the date of the certificate of exemption.¹⁶⁶⁹ Regardless, it is a best practice to apply for and obtain exemptions in advance—or at a minimum contemporaneously with the transaction that may give rise to the tax obligation. Exemptions are often granted for a limited period (*e.g.*, one year), after which the holder of a certificate of exemption would be required to apply for another certificate, as applicable, for any subsequent years.¹⁶⁷⁰

¹⁶⁶⁶ *Id.*

¹⁶⁶⁷ *See, e.g.*, N.C. Gen. Stat. § 105-164.13(55a); N.D. Cent. Code § 57-39.2-04.17; Ga. Code Ann. § 48-8-3(68).

¹⁶⁶⁸ *E.g.*, Ga. Code Ann. § 48-8-3(68).

¹⁶⁶⁹ *E.g.*, 72 Pa. Code § 9931-D; Pennsylvania Department of Revenue, Computer Data Center Equipment Exemption Program, December 2022 (noting that “[i]f the certified data center owner, operator or qualified tenant do not possess a valid exemption certificate, sales and use tax must be paid”).

¹⁶⁷⁰ *E.g.*, Ga. Code Ann. § 48-8-3(68).

In some jurisdictions, electricity is subject to sales and use tax.¹⁶⁷¹ When Celsius Mining leases space in a third-party facility, the tax on electricity is paid directly by the third-party host and passed on to Celsius Mining as part of its hosting fees.¹⁶⁷² Celsius Mining pays no direct tax in that circumstance. However, when Celsius Mining directly purchases electricity, it pays sales tax on the purchase of the electricity absent an applicable exemption or exclusion.¹⁶⁷³ No accrual is necessary when the tax is billed with the electricity usage invoice and paid by Celsius Mining.¹⁶⁷⁴ In that circumstance, without an exemption, the tax is an additional cost of the mining business.¹⁶⁷⁵ Celsius's counsel confirmed that Celsius Mining does not incur any sales or use tax liability with respect to electricity it generates and uses itself at its proprietary mining facility in Texas.

¹⁶⁷¹ *E.g.*, 61 Pa. Code § 60.16; 34 Tex. Admin. Code §3.295(b).

¹⁶⁷² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 22, 2022).

¹⁶⁷³ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁶⁷⁴ *Id.*

¹⁶⁷⁵ *Id.*

B. VAT.

VAT is also an indirect consumption tax levied on goods and services at each point in the supply chain (*i.e.*, purchase of raw materials to sale of a finished product or service to a consumer). Although VAT is not a tax that is imposed in the United States, numerous countries, including the United Kingdom, impose a VAT.¹⁶⁷⁶

The United Kingdom imposes VAT on the supply of goods and services in its country by a business deemed to be taxable.¹⁶⁷⁷ Businesses exceeding the registration threshold are required to register with the United Kingdom's tax authority, HM Revenue & Customs ("HMRC"), and remit VAT collected and claim credits for VAT paid on returns filed with HMRC.¹⁶⁷⁸ In general, businesses can claim credit for the inputs to their taxable sales and remit the tax collected on taxable sales so that tax is paid only on the value added by each step in the production process.¹⁶⁷⁹

¹⁶⁷⁶ Value Added Tax Act 1994, c. 23 (Eng.), <https://www.legislation.gov.uk/ukpga/1994/23/contents>.

¹⁶⁷⁷ *Id.* at Part I, c. 23.

¹⁶⁷⁸ HM Revenue & Customs, VAT guide (VAT Notice 700) (December 17, 2004, last updated November 25, 2022), <https://www.gov.uk/guidance/vat-guide-notice-700>.

¹⁶⁷⁹ *Id.* at ¶10.

III. Celsius's Tax Function And Policies And Procedures For Identifying And Paying Tax Obligations.

A. Celsius's Tax Team.

1. Celsius's Internal Tax Team.

Celsius currently employs two dedicated tax professionals: Mr. Koren and Mr. Morgan.¹⁶⁸⁰

Mr. Koren, located in Israel, was hired in June 2021 as Celsius's Director of Global Taxation handling global tax matters.¹⁶⁸¹ He was Celsius's first internal tax professional.¹⁶⁸² Mr. Koren currently leads Celsius's tax team and holds the title of Vice President of Finance and Tax.¹⁶⁸³ As part of his initial mandate, Mr. Koren was asked to review Celsius's business activity over the prior three years from a tax perspective.¹⁶⁸⁴ He also was tasked, from June through August 2021, with working on the migration of Celsius's retail business from the United Kingdom to the United States and the tax implications of that migration.¹⁶⁸⁵ Since that time, Mr. Koren has been advising Celsius on VAT issues.¹⁶⁸⁶

After he was hired, Mr. Koren determined that he needed a full-time tax

¹⁶⁸⁰ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

¹⁶⁸¹ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁶⁸² *Id.*

¹⁶⁸³ *Id.*

¹⁶⁸⁴ *Id.*

¹⁶⁸⁵ *Id.*

¹⁶⁸⁶ *Id.*

professional dedicated to managing Celsius's tax compliance obligations in the United States.¹⁶⁸⁷ Celsius hired Mr. Morgan as the U.S. Senior Tax Manager in December 2021.¹⁶⁸⁸ During the Examiner's interviews of Mr. Morgan, Mr. Morgan repeatedly stated that he was hired to assist with United States income tax compliance and that sales and use tax issues were "not in [his] job description."¹⁶⁸⁹

The Examiner showed Mr. Morgan the draft tax organization chart pictured below as well as an internal planning document describing Celsius's tax professionals' responsibilities. Both of these documents include sales tax as one of Mr. Morgan's responsibilities.¹⁶⁹⁰ In response, Mr. Morgan stated that he was unsure whether he had ever seen the tax organization chart and that it was his understanding when hired that he was not responsible for sales or use tax compliance.¹⁶⁹¹ Mr. Morgan further stated that, to the extent he was responsible for sales or use tax issues, it would have been for the network business and not

¹⁶⁸⁷ *Id.*

¹⁶⁸⁸ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁶⁸⁹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁶⁹⁰ Email from Confluence on behalf of Vered Kaplan to Lior Koren (January 30, 2022), CEL_EXAM-00026135 (notifying Lior Koren that Vered Kaplan edited a chart titled "Tax Team Member responsibilities [sic]"); Tax Department – Overview of Structure (December 2021), CEL_EXAM-00044676.

¹⁶⁹¹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

for Celsius Mining.¹⁶⁹² The Examiner also showed Mr. Morgan a document produced to the Examiner as the job description posted by “Celsius Network” for “US Tax Manager” that included in the job description “[m]anage the US compliance process with ongoing statutory tax requirements (including Federal, State, Sales, Use and other taxes).”¹⁶⁹³ Mr. Morgan said that this responsibility was for Celsius Network (US), not for Celsius Mining.¹⁶⁹⁴ But he also acknowledged that the network business did not routinely incur any sales or use taxes obligations other than sales tax that “big box” vendors charge when purchasing items from their stores.¹⁶⁹⁵ According to Mr. Morgan, he did not become responsible for overseeing Celsius Mining’s compliance with sales and use tax laws until June 2022 and was only tasked with the responsibility at that time because, in his words, “nobody else has picked it up.”¹⁶⁹⁶

¹⁶⁹² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁶⁹³ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022); US Tax Manager Job Description, CEL_EXAM-00178981.

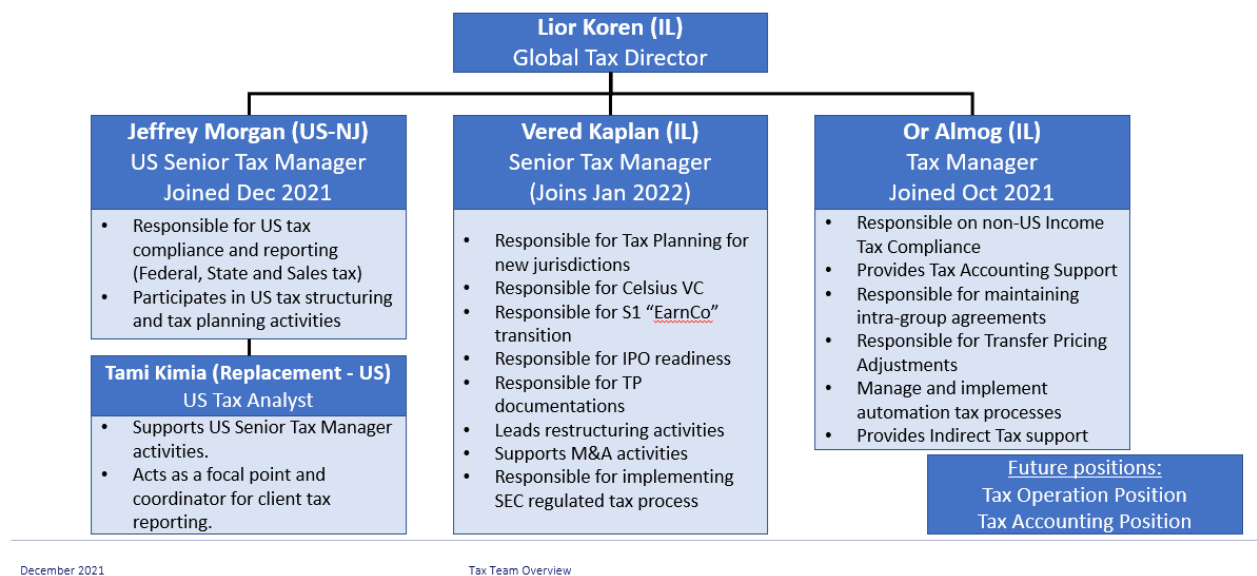
¹⁶⁹⁴ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁶⁹⁵ *Id.*

¹⁶⁹⁶ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2022).

Depicted in the below chart are the three other professionals on the Celsius tax team as of December 2021:¹⁶⁹⁷ Vered Kaplan (Senior Tax Manager), employed from January 2022 to June 2022; Or Almog (Tax Manager), employed from October 2021 to August 2022; and Tami Kimia (U.S. Tax Analyst), who left in December 2021.¹⁶⁹⁸ Celsius has not hired anyone to replace those individuals.¹⁶⁹⁹

Tax Department – Overview of Structure



Following the departures of these individuals, Celsius's remaining tax professionals—Mr. Koren and Mr. Morgan—began advising various business units on tax matters that were outside the scope of their job description as

¹⁶⁹⁷ Tax Department – Overview of Structure (December 2021), CEL_EXAM-00044676. Mr. Koren stated that the chart was prepared in anticipation of implementing a "shared-services" model under which certain individuals on the tax team would serve as points of contact for various tax-related issues or questions raised by Celsius's business teams; however, such "shared-services" model was never implemented. Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

initially defined.¹⁷⁰⁰ Mr. Koren stated that, over time, all of Celsius's job functions became vague: There were "no actual job descriptions for anyone in the company since earlier [in 2022]."¹⁷⁰¹

2. Celsius's External Tax Team.

Celsius worked with multiple external tax advisors, including with respect to its sales and use tax and VAT obligations. Historically, Celsius engaged Ernst & Young (Israel) to advise on tax compliance.¹⁷⁰² Ernst & Young (United States) took on an expanded role to advise Celsius during the migration.¹⁷⁰³ Mr. Koren stated that as part of his initial assignment to identify "gaps" and material tax exposures, he sought "more professional" tax advice in the United Kingdom.¹⁷⁰⁴ Celsius eventually retained Mazars which, as described in more detail below in Section VI, advised Celsius with respect to VAT matters.¹⁷⁰⁵

¹⁶⁹⁸ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022; Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁶⁹⁹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁷⁰⁰ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022; Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁷⁰¹ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁷⁰² *Id.*

¹⁷⁰³ *Id.*

¹⁷⁰⁴ *Id.*

¹⁷⁰⁵ *Id.*

Around the time of the migration, Deloitte was advising Celsius's investors in connection with their Round B financing.¹⁷⁰⁶ Celsius leveraged Deloitte's knowledge and worked in collaboration with Deloitte, Ernst & Young, and Mazars to minimize tax exposures during the migration.¹⁷⁰⁷ Specifically, Mr. Koren stated that he initially worked with Deloitte on VAT matters, in light of the lack of guidance provided by HMRC.¹⁷⁰⁸

In the United States, Celsius uses Ernst & Young and in particular Ernst & Young's "state desks" to advise on questions regarding sales and use tax obligations.¹⁷⁰⁹ The "state desks" are sales and use tax professionals within each state, assigned by Ernst & Young to advise its clients about applicable state tax laws.¹⁷¹⁰ These state desks assist Celsius in identifying applicable sales and use tax exemptions in the specific states in which Celsius Mining stores and/or deploys mining equipment, based on information that Celsius provides regarding the location and use of its assets.¹⁷¹¹ Following Celsius's bankruptcy filing, Ernst & Young's primary focus has been on responding to questions from Celsius relating the exemption process and Celsius's tax liabilities.¹⁷¹² Ernst & Young is

¹⁷⁰⁶ *Id.*

¹⁷⁰⁷ *Id.*

¹⁷⁰⁸ *Id.*

¹⁷⁰⁹ Examiner Interview of Nancy Flag (Managing Director – Ernst & Young, November 11, 2022).

¹⁷¹⁰ *Id.*

¹⁷¹¹ *Id.*

¹⁷¹² *Id.*

not assisting Celsius with developing more robust tax policies and procedures.¹⁷¹³

B. Celsius's Reporting Structure And Lack Of Written Policies And Procedures.

Typically, corporate tax functions are systematized to identify direct (*e.g.*, income, franchise, gross receipts) and indirect (*e.g.*, sales and use, property, VAT) tax payment obligations, as well as tax information reporting responsibilities (*i.e.*, forms W-2 and 1099) mandated by its operations and the jurisdictions in which it operates. Filing responsibilities are tracked and charted to ensure the timely filing of returns, estimated payments, and timely requests for extensions where needed. The data necessary to complete the returns are delegated to various members of the tax and finance teams or to external accounting services. These professionals ensure that the proper data is compiled, calculated, and available for preparation of the required returns, whether the returns are filed by internal staff or outside tax professionals. Finally, personnel are identified to handle tax inquiries or audits related to tax filings.

Neither Celsius's tax department nor Celsius Mining adopted these typical procedures with respect to monitoring use tax compliance. Celsius Mining, the primary entity incurring use tax obligations, did not employ any dedicated tax professionals as part of its management team.¹⁷¹⁴ Celsius, which did not have a

¹⁷¹³ *Id.*

¹⁷¹⁴ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022; Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

tax department until 2021, did nothing to proactively track or anticipate Celsius Mining's tax obligations until late 2022.¹⁷¹⁵ Moreover, Celsius's tax department does not have any formal, written tax department policies or procedures detailing a reporting structure for tax matters or information that is regularly shared with the tax team.¹⁷¹⁶ Mr. Koren stated that the tax team did not have time to look into new initiatives to help business units plan in a tax efficient and compliant manner because the team's time was taken up by dealing with the migration and time-consuming United States income tax reporting and compliance.¹⁷¹⁷

Celsius's tax professionals explained their lack of oversight over Celsius Mining by pointing to the fact that Celsius Mining was organized as a "self-governed" entity, meaning it was expected to operate as an independent business and in Celsius's view, the Celsius Mining finance team should have been responsible for resolving sales and use tax issues.¹⁷¹⁸ Celsius structured Celsius Mining with independent management because Celsius anticipated spinning Celsius Mining off in an initial public offering in 2022.¹⁷¹⁹

However, post-petition, Celsius Mining is no longer operating as a "self-

¹⁷¹⁵ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022; Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

¹⁷¹⁶ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁷¹⁷ *Id.*

¹⁷¹⁸ *Id.*; Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022 (referring to Celsius Mining as a "self-governing" entity); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2022).

¹⁷¹⁹ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

governed” entity. As a result, Messrs. Koren and Morgan have become more involved in managing the sales and use tax process in collaboration with Celsius Mining’s finance team.¹⁷²⁰ Because Celsius Mining lacked individuals with the necessary expertise to address use tax issues, its management reached out to Celsius’s tax professionals for assistance in early 2022. However, the Examiner has received no evidence suggesting that Celsius’s tax professionals took any meaningful action to identify and resolve Celsius Mining’s tax liabilities until later in 2022.¹⁷²¹

In late June 2022, Mr. Morgan began advising Celsius Mining on the use tax implications of its activities.¹⁷²² Celsius had no written guidelines, Mr. Morgan explained, for how and when its business entities should seek guidance from a Celsius tax professional.¹⁷²³ The Examiner’s investigation found that, prior to June 2022, communications between Celsius Mining and Celsius’s tax professionals regarding sales and use tax issues were irregular and conducted on an ad-hoc basis.¹⁷²⁴

Celsius Mining management also did not always discuss its business

¹⁷²⁰ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2022).

¹⁷²¹ Email from Jenny Fan to Lior Koren (March 12, 2022), CEL_EXAM-00015776; Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

¹⁷²² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁷²³ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

¹⁷²⁴ *Id.*

decisions in advance with Celsius's tax professionals. In some instances, Mr. Koren and Mr. Morgan were asked to provide tax advice after Celsius Mining made business decisions with adverse tax consequences—for example, deploying mining rigs in states without having obtained an exemption or for which no exemption was available.¹⁷²⁵ Although Mr. Holert stated that he would not move forward on business decisions without considering Mr. Morgan's advice on tax matters,¹⁷²⁶ he also said that because of the fast-moving nature of the business, he was not always able to give Mr. Morgan time to weigh in on decisions in advance.¹⁷²⁷ Mr. Holert also stated that due to a scarcity of resources, he waits until matters reach a certain likelihood of moving forward before engaging the tax team.¹⁷²⁸

Further, like Mr. Morgan, Mr. Holert told the Examiner that he was not responsible for identifying and following through on resolving any tax issues of Celsius Mining.¹⁷²⁹ Similarly, Ms. Fan told the Examiner that there is not one person at Celsius Mining responsible for resolving sales and use tax issues for Celsius Mining.¹⁷³⁰ Rather, Ms. Fan stated that it is a "collaborative discussion

¹⁷²⁵ *Id.*

¹⁷²⁶ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁷²⁷ *Id.*

¹⁷²⁸ *Id.*

¹⁷²⁹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

¹⁷³⁰ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

or effort from the tax team as well as the Celsius Mining team” and, ultimately, Mr. Morgan and Mr. Koren are responsible for executing the decisions made with respect to Celsius Mining’s sales and use tax obligations.¹⁷³¹

Prior to this examination, Celsius’s tax professionals did not appear to meet on a regular basis to discuss Celsius’s tax issues. During the Examiner’s November 8, 2022 interview, Mr. Morgan stated that he and Mr. Koren met on an as-needed basis rather than during regularly-scheduled meetings.¹⁷³² In subsequent interviews, Mr. Koren, Mr. Holert, and Ms. Fan each told the Examiner that they scheduled and held weekly meetings with Mr. Morgan to discuss tax matters.¹⁷³³ It appears, however, that these weekly meetings only began in November 2022, after the Examiner’s first interview of Mr. Morgan.¹⁷³⁴

IV. Celsius’s Sales Tax Obligations.

In the Tax Motion, Celsius stated: “In the ordinary course of business, the Debtors *collect, withhold, incur, and/or pay sales and use taxes, [VAT], income taxes, customs and import duties, as well as other governmental taxes, fees, and*

¹⁷³¹ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 22, 2022)

¹⁷³² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

¹⁷³³ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁷³⁴ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022); Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

assessments, and may pay property taxes.”¹⁷³⁵

In response to the Examiner’s inquiries regarding sales tax, Mr. Koren, Mr. Morgan, and Celsius’s counsel each confirmed that Celsius does not, in fact, collect or withhold sales tax and that Celsius has no outstanding sales tax liabilities as of the Petition Date. They described the Tax Motion’s reference to “sales tax” and to “collect[ing]” and “withhold[ing]” sales taxes as inadvertent “boilerplate language” that did not apply to Celsius and should not have been included in the Tax Motion.¹⁷³⁶

The Examiner’s review of Celsius’s tax papers and documents confirmed Celsius’s representations regarding its lack of sales tax collection or withholding obligations. In particular, the Examiner investigated whether two separate mining rig sales on June 29, 2022, and July 5, 2022, of 6,336 mining rigs for a total sales price of \$17,265,096, required Celsius Mining to collect sales tax.¹⁷³⁷ Celsius represented that those sales were determined to have occurred in Delaware, and did not result in sales tax because Delaware does not have a sales tax for an in-Delaware transaction.¹⁷³⁸ Celsius further represented that, even

¹⁷³⁵ Tax Motion, ¶ 8 (emphasis added).

¹⁷³⁶ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷³⁷ Email from Gail Morse to Anthony Sexton (Celsius’s counsel) (October 18, 2022); Celsius Mining LLC Estimated USE [*sic*] Tax Due As of October 11, 2022 (October 11, 2022).

¹⁷³⁸ Email from Anthony Sexton (Celsius’s counsel) to Gail Morse (October 20, 2022); 30 Del. Code tit. 30.

had the transaction taken place outside of Delaware, Celsius Mining likely would have qualified for an “occasional sale exemption” because it is not a rig dealer.¹⁷³⁹

Celsius continues to evaluate on a case-by-case basis whether it has an obligation to collect and remit sales tax.¹⁷⁴⁰ Based on her interviews with Messrs. Koren, Morgan, and Holert and Ms. Flagg and Fan, and her review of documents produced by Celsius, the Examiner has not identified any material outstanding sales tax obligations of Celsius.

As noted above, Celsius is charged sales tax as a part of the price of electricity it purchases from others, and when Celsius purchases electricity directly, sales tax on the purchase of the electricity is paid by Celsius in the absence of an applicable exemption or exclusion.¹⁷⁴¹

V. Celsius Mining’s Use Tax Obligations.

A. Celsius Mining Incurs Substantial Use Tax Liability In Its Operations.

Celsius Mining’s purchase, storage, movement, and deployment of mining equipment at various hosting sites gave rise, and continues to give rise, to certain tax obligations. These obligations arise in two scenarios: (i) sales taxes Celsius Mining must pay to the retail vendor; and (ii) in the event the retail vendor did not collect sales tax, use taxes Celsius Mining must self-assess and pay to state

¹⁷³⁹ Email from Anthony Sexton (Celsius’s counsel) to Gail Morse (October 20, 2022).

¹⁷⁴⁰ Email from Patrick Holert to Jeff Morgan (June 24, 2022), CEL_EXAM-00047113 (containing a request by Mr. Holert that he and Mr. Morgan schedule a call to discuss Celsius Mining’s sales tax obligations when Celsius Mining it is selling mining equipment).

¹⁷⁴¹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

or local taxing authorities.¹⁷⁴²

As discussed above, when, for example, Celsius Mining purchases a mining rig from a United States vendor, that vendor is required to collect sales tax from Celsius Mining at the time of sale absent an applicable exemption or exclusion. If sales tax is paid, Celsius Mining's use tax obligation to the jurisdiction in which the sale took place is also paid. Celsius Mining has no further use tax obligation unless the mining rig is moved to a new jurisdiction. However, if no sales tax is paid, or if the tax is paid but the equipment is later moved, Celsius Mining must determine if a use tax is due, either in the jurisdiction of purchase or in the new jurisdiction.¹⁷⁴³ If use tax is due, Celsius Mining must timely self-assess and pay it to the taxing jurisdiction.¹⁷⁴⁴

As detailed in the Sections that follow, during the period of 2020-2021, Celsius Mining deployed mining rigs purchased by United States vendors in various states.¹⁷⁴⁵ Those vendors directed Celsius Mining on when and how to apply for relevant exemptions and collected sales tax from Celsius Mining when

¹⁷⁴² Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁴³ *Id.*

¹⁷⁴⁴ *Id.*

¹⁷⁴⁵ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

applicable.¹⁷⁴⁶ Celsius Mining was aware that its mining operations generated use tax liabilities, and it was not required to self-assess and pay use taxes on the these mining rigs because sales tax was paid to the vendors.¹⁷⁴⁷

Starting in late 2021, however, Celsius Mining began purchasing mining rigs from foreign vendors, which it deployed in various states starting in 2022.¹⁷⁴⁸ Celsius Mining's deployment of these mining rigs had tax consequences. Because the foreign vendors did not collect sales tax required by U.S. state and local taxing authorities, Celsius Mining was obliged to self-assess and pay use tax or seek exemption from the tax. Despite Celsius's tax professionals and Celsius Mining knowing that Celsius Mining could incur use tax liability, Celsius Mining failed to timely pay or timely seek exemptions for these mining rigs, leading to substantial outstanding use tax liability as of the Petition Date.¹⁷⁴⁹

Celsius Mining's use tax obligations from 2020-2022 are described in detail in Sections V.B. and V.C., below. In addition, the chart set forth in Appendix 29 summarizes the states in which Celsius Mining deployed mining rigs and relevant tax exemptions.

¹⁷⁴⁶ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁴⁷ *Id.*

¹⁷⁴⁸ *Id.*

¹⁷⁴⁹ Almog, Or, Internal UTP analysis – Celsius Mining LLC Q3 – 2021 (December 6, 2021), CEL_EXAM-00015671; Email from Or Almog to Amir Chenchinski (December 9, 2021), CEL_EXAM-00015670; Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

B. Prior To 2022, Celsius Mining Relied On Its Vendors For Its Tax Compliance Relating To Its Mining Rigs.

Celsius Mining purchased its first mining rigs in 2020 from United States-based Core Scientific.¹⁷⁵⁰ Throughout 2021, Celsius Mining continued to purchase mining equipment from domestic vendors and deployed that equipment (*i.e.*, installed equipment in data centers) in various U.S. states.¹⁷⁵¹ As noted above, deployment required that Celsius Mining pay sales tax to Core Scientific or obtain an exemption.

Celsius Mining relied on Core Scientific to address sales and use tax obligations and did not utilize the assistance of any Celsius tax professionals.¹⁷⁵² For example, in March 2021, Celsius Mining applied for two sales tax exemption certificates in Georgia.¹⁷⁵³ Mr. Holert said he worked with Core Scientific on these applications and that he “was looking for Core Scientific to . . . give guidance on tax issues.”¹⁷⁵⁴

¹⁷⁵⁰ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

¹⁷⁵¹ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁵² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 1, 2022).

¹⁷⁵³ Certificate of Exemption Computer Equipment for a High Technology Company (“Certificate of Exemption”) (206 Boring Drive, Dalton, GA 30721, April 27, 2021); Certificate of Exemption (2205 Industrial South Road, Dalton, GA, 30721, April 27, 2021).

¹⁷⁵⁴ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

Mr. Morgan told the Examiner that in June 2022, as a result of realizing that there may be some use tax issues, he reviewed Celsius Mining's use tax obligations since Celsius Mining's formation in 2020.¹⁷⁵⁵ Mr. Morgan concluded that there were no outstanding liabilities because either: (i) an exemption applied, excepting Celsius Mining from sales or use tax obligations on its pre-2022 purchases of rigs from U.S. vendors; or (ii) where no exemption applied, Celsius Mining had paid sales tax on its purchases to its vendors.¹⁷⁵⁶ Mr. Koren explained that Celsius Mining's purchase of mining equipment from foreign vendors starting in mid-2021 also did not create a use tax liability because it did not deploy that equipment until 2022, and deployment, not purchase, triggers its use tax obligations.¹⁷⁵⁷

C. Beginning In 2022, Celsius Mining Became Obligated To Pay Use Tax On The Deployment Of Its Foreign-Sourced Rigs.

In 2022, Celsius Mining deployed the mining rigs it purchased from foreign vendors in Georgia, Pennsylvania, and Texas.¹⁷⁵⁸ These deployments triggered

¹⁷⁵⁵ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

¹⁷⁵⁶ *Id.*; Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁵⁷ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022). In contrast, Mr. Morgan stated that in 2021, all purchases of mining equipment were made from a domestic vendor but acknowledged that some mining equipment purchased in 2021 was stored in a warehouse in Georgia. Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁵⁸ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director –

Celsius Mining's obligation to self-assess use taxes or obtain exemptions in the relevant jurisdictions. Celsius Mining did neither: It did not timely self-assess and pay use taxes, and it failed to proactively seek exemptions that would mitigate or eliminate its use tax exposure.¹⁷⁵⁹

As a result, as of the Petition Date and as disclosed in Celsius's Tax Motion, Celsius had outstanding use tax liabilities of approximately \$16.5 million.¹⁷⁶⁰ Mr. Morgan explained that this figure consists of estimated use tax liabilities in Georgia of \$11.5 million and in Pennsylvania of \$5 million.¹⁷⁶¹ After the Petition Date, Celsius estimates that Celsius Mining has incurred an additional \$6.6 million of use tax liabilities in Texas for mining rigs deployed after the Petition Date¹⁷⁶²—an estimate that includes approximately \$900,000 in interest, penalties, and late fees.¹⁷⁶³ This tax has not been paid.¹⁷⁶⁴

Ernst & Young) (October 13, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁷⁵⁹ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁷⁶⁰ Tax Motion, ¶14.

¹⁷⁶¹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁶² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁷⁶³ Celsius Mining LLC Estimated Texas Use Tax Due as of December 2, 2022 (December 2, 2022).

¹⁷⁶⁴ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

1. Communication Lapses Between Celsius Mining and Celsius's Tax Professionals Contributed To Significant Use Tax Liabilities.

The Examiner's investigation uncovered conflicting accounts of how and when Celsius became aware of its outstanding 2022 use tax obligations and who within the organization was responsible for those obligations. Some of the miscommunication, or lack of communication, within Celsius may be because, as described above, prior to 2022, Celsius was not required to self-assess or pay its own use tax obligations. Yet, despite the fact that Celsius Mining did not become obligated to self-assess use taxes until 2022, documents, correspondence, and witness statements all demonstrate that the general issue of Celsius Mining's use tax obligations was on both Celsius's tax professionals' and Celsius Mining's radar in 2021.

As described above, Mr. Holert worked with Core Scientific in 2021 to apply for sales tax exemption certificates and otherwise sought Core Scientific's guidance on sales tax matters.¹⁷⁶⁵ Mr. Holert is listed as the point of contact for Celsius Mining on the relevant exemption certificates.¹⁷⁶⁶

Further, in late 2021, Celsius tax professional Mr. Almog prepared an internal analysis of Celsius Mining's uncertain tax positions (the "UTP

¹⁷⁶⁵ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

¹⁷⁶⁶ Certificate of Exemption (206 Boring Drive, Dalton, GA 30721, April 27, 2021); Certificate of Exemption (2205 Industrial South Road, Dalton, GA, 30721, April 27, 2021).

Analysis”).¹⁷⁶⁷ Mr. Koren reviewed the UTP Analysis, and on December 9, 2021, Celsius shared it, via email, with Ernst & Young.¹⁷⁶⁸ The UTP Analysis noted that, as of the third quarter of 2021, Celsius Mining had “minimum exposure” to sales and use taxes on its acquisition of mining equipment because it previously was charged full sales tax by its United States-based supplier.¹⁷⁶⁹ But the UTP Analysis noted the need to further review sales and use tax liabilities “in a later stage as the company ordered equipment from foreign suppliers (however not yet placed in service),” for which the foreign vendors did not collect sales tax, and therefore “use tax might apply.”¹⁷⁷⁰

There was a lack of communication within Celsius with respect to who was responsible for tracking and resolving use tax issues arising from foreign vendor purchases. Mr. Morgan was copied on the December 9, 2021 email to Ernst & Young, but stated that he “probably deleted it because it had nothing to do with what [he] was working on.”¹⁷⁷¹ Matthew Musano of Ernst & Young sent the UTP Analysis to Mr. Morgan on January 5, 2022, but Mr. Morgan described his conversations with Mr. Musano around that time as limited to income tax.¹⁷⁷²

¹⁷⁶⁷ Almog, Or, Internal UTP analysis – Celsius Mining LLC Q3 – 2021 (December 6, 2021), CEL_EXAM-00015671.

¹⁷⁶⁸ Email from Or Almog to Amir Chenchinski (December 9, 2021), CEL_EXAM-00015670.

¹⁷⁶⁹ Almog, Or, Internal UTP analysis – Celsius Mining LLC Q3 – 2021 (December 6, 2021), CEL_EXAM-00015671.

¹⁷⁷⁰ *Id.*

¹⁷⁷¹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁷⁷² *Id.*

Mr. Koren could not identify an individual responsible for reviewing use tax obligations arising from purchases from foreign vendors but opined that it would have been the Chief Financial Officer of Celsius Mining.¹⁷⁷³

An email meeting invitation reflects that Messrs. Koren and Morgan met on January 31, 2022, with agenda items including “HR,” “1099,” “Mining Books,” “ETR,” and “Sales Tax.”¹⁷⁷⁴ While Mr. Morgan stated that he likely attended this meeting and that they likely discussed the topics on the agenda, he did not recall any discussion of Celsius Mining’s use tax issues and stated that any discussion of use tax must have been in reference to Celsius Network (US).¹⁷⁷⁵

Despite his stated lack of recollection, emails reflect that Mr. Morgan was considering Celsius Mining’s use tax obligations during this time frame. On January 10, 2022, Mr. Morgan sent an email to Ms. Fan, the then-controller of Celsius Mining, in which he asked her how sales and use taxes were being managed.¹⁷⁷⁶ On March 12, 2022, Ms. Fan emailed Mr. Koren to inform him that Celsius Mining had started to receive deliveries of mining equipment from foreign vendors Bitmain and MicroBT—neither of which collected sales tax on the purchase.¹⁷⁷⁷ Ms. Fan inquired whether Mr. Koren had a contact that could help

¹⁷⁷³ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

¹⁷⁷⁴ Meeting Invitation from Lior Koren to Jeff Morgan (January 31 ,2022), CEL_EXAM-00050988.

¹⁷⁷⁵ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁷⁷⁶ Email from Jeff Morgan to Jenny Fan (January 10, 2022), CEL_EXAM-00030202.

¹⁷⁷⁷ Email from Jenny Fan to Lior Koren (March 12, 2022), CEL_EXAM-00015776.

determine whether and how to calculate and pay “sales tax [sic]” on those purchases.¹⁷⁷⁸ Mr. Koren added Heather Le Clair, a tax professional from Ernst & Young, and several Celsius employees, including Mr. Morgan, to the email thread.¹⁷⁷⁹

When asked by the Examiner about this email thread, Mr. Morgan claimed to have been copied for his “general knowledge,” not because he was being directed to respond in some way.¹⁷⁸⁰ Mr. Morgan’s statement appears to be contradicted by a March 3, 2022 email in which Mr. Morgan wrote to Mr. Almog, “I have the listing of fixed assets Jenny shared with me. I will reach out again on the sales tax issue.”¹⁷⁸¹ Similarly, Mr. Holert stated that he “didn’t really pay much attention” to Ms. Fan’s email, as several other individuals focused on accounting and tax issues were included in the email chain and his role would have been only to provide operational information.¹⁷⁸² Ms. Fan stated that Celsius Mining provided information (including invoices from their mining equipment vendors) to Ernst & Young but did not receive a “very direct or very definite answer from them as to how to proceed,” noting that it is a long process to get tax advice from Ernst & Young.¹⁷⁸³

¹⁷⁷⁸ *Id.*

¹⁷⁷⁹ Email from Lior Koren to Jenny Fan (March 14, 2022), CEL_EXAM-00015776.

¹⁷⁸⁰ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁷⁸¹ Email from Jeff Morgan to Or Almog (March 3, 2022), CEL_EXAM-00158982.

¹⁷⁸² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

¹⁷⁸³ Examiner Interview of Jenny Fan (Chief Financial Officer – Celsius Mining, December 22, 2022).

As discussed above, according to Mr. Morgan, he did not have responsibility for sales and use tax issues until late June 2022,¹⁷⁸⁴ at which time he became aware of Celsius Mining's obligation and failure to pay sales and use taxes.¹⁷⁸⁵ In response to questions by Ms. Fan regarding whether Celsius Mining has an obligation to collect sales tax when it sells mining equipment, Mr. Morgan reviewed a fixed assets schedule in connection with a potential sale and asked Ms. Fan why sales tax was being charged on some items but not others.¹⁷⁸⁶ This process, Mr. Morgan said, led him to realize that Celsius Mining had unpaid use taxes obligations,¹⁷⁸⁷ which he reported to Mr. Koren and Rod Bolger, then-Chief Financial Officer of Celsius.¹⁷⁸⁸ Starting then, Messrs. Morgan, Koren, and Holert and Ms. Fan met more frequently to discuss Celsius Mining's sales and use tax issues.¹⁷⁸⁹

¹⁷⁸⁴ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 19, 2022).

¹⁷⁸⁵ *Id.*

¹⁷⁸⁶ *Id.*

¹⁷⁸⁷ *Id.*

¹⁷⁸⁸ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

¹⁷⁸⁹ Mr. Holert stated that he has been involved in calls between Mr. Koren, Mr. Morgan and Ernst & Young for “over a year or more,” but was not able to specify when conversations regarding sales and use tax obligations began. Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

2. Celsius Mining's 2022 Use Tax Obligations In Georgia, Pennsylvania, And Texas.

As a result of Celsius Mining's failure to timely self-assess its tax obligations and apply for exemptions, it owed substantial use taxes as of the Petition Date in Georgia and Pennsylvania. Celsius Mining incurred additional use taxes in Texas following the Petition Date.

a. Celsius's Use Tax Obligations In Georgia.

Throughout 2022, Celsius Mining deployed foreign-sourced mining equipment into facilities in Georgia. It did so without first requesting an exemption certificate from Georgia authorities for 2022 at each of the facilities in which it deployed mining rigs.¹⁷⁹⁰ Mr. Morgan blamed this failure on personnel turnover or incorrect assumptions about whether Celsius Mining's 2021 exemption certificates would carry over to 2022.¹⁷⁹¹

Mr. Holert stated that for certain of the foreign-sourced mining rigs, the original intent was to deploy those mining rigs in Luna Squares' Pennsylvania facilities.¹⁷⁹² When plans changed in June 2022 due to Luna Squares' inability

¹⁷⁹⁰ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁹¹ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022) (nothing, “[s]omebody may have thought incorrectly that exemptions provided in 2021 was coverage for 2022. It was not.”); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022) (noting, “[a]t the end of 2021, we had new staff additions and some of the knowledge transfer that should have happened, didn’t”).

¹⁷⁹² Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

to accommodate them in Pennsylvania, Celsius Mining realized it had not obtained 2022 Georgia exemption certificates for any Georgia facilities.¹⁷⁹³ Celsius Mining applied for those certificates two months later, in August 2022, and they were issued on September 1, 2022, “for calendar year 2022.”¹⁷⁹⁴ Mr. Morgan told the Examiner that the exemptions apply retroactively for all mining equipment deployed in Georgia in 2022.¹⁷⁹⁵ In other words, Celsius Mining believes that the entirety of its estimated \$11.5 million use tax liability in Georgia has been negated by the exemption certificates.¹⁷⁹⁶ Notably, the exemption is subject to audit, so whether the \$11.5 million has been finally negated is yet to be finally determined.¹⁷⁹⁷

¹⁷⁹³ *Id.*

¹⁷⁹⁴ Certificate of Exemption (2205 Industrial South Road, Dalton, GA 30721, September 1, 2022); Certificate of Exemption (2131 Old W. Point Rd., West Point, GA 31833, September 1, 2022); Certificate of Exemption (206 Boring Drive, Dalton, GA 30721, September 1, 2022); Certificate of Exemption (1133 Culpepper Drive, Conyers, GA 30094, September 1, 2022); Certificate of Exemption (698 Brantley Blvd., Dalton, GA 31535, September 1, 2022) (application was filed for 698 Brantley Blvd., Douglas, GA 31535); and Certificate of Exemption (2015 George Lyons Parkway, Sandersville, GA 31082, September 1, 2022).

¹⁷⁹⁵ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022); Email from Jeff Morgan to Lior Koren (August 3, 2022). The exemption certificates state that such certificates “will be valid for purchases of and leases executed on computer equipment used for a high technology company for calendar year 2022.” *E.g.*, Certificate of Exemption Computer Equipment for a High Technology Company (2205 Industrial South Road, Dalton, GA 30721, September 1, 2022).

¹⁷⁹⁶ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁹⁷ The applications for the certificates, which are attached to the certificates provided by Celsius to the Examiner, note that “qualifying purchases and leases must satisfy the annual \$15 million requirement.” Applicants are required to list the computer equipment to be purchased or leased in the exemption year and estimated purchase

b. Celsius's Use Tax Obligations In Pennsylvania.

In 2022, Celsius Mining also deployed mining equipment in Pennsylvania without discussing the tax implications with Mr. Morgan and Mr. Koren or determining whether applicable tax exemptions exist.¹⁷⁹⁸ Mr. Morgan stated that he was not even aware of the Pennsylvania mining rigs until June 2022.¹⁷⁹⁹ When he looked into Pennsylvania deployments, Mr. Morgan became aware of a relevant data-center exemption that became effective January 1, 2022.¹⁸⁰⁰ The lack of communication between Celsius Mining and Celsius on the deployment of these mining rigs, including a missed opportunity to timely file for an exemption, is an example of the failure of Celsius Mining management to coordinate with Celsius's tax department before taking actions that could trigger use tax liabilities.

Absent retroactive application of the exemption, Mr. Morgan estimated Celsius Mining's Pennsylvania use tax liability for its 2022 activities to be

price or, in the case of a lease, book value. Such "total investment" amount is marked as "subject to audit" by the Georgia Department of Revenue.

¹⁷⁹⁸ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 8, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁷⁹⁹ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁸⁰⁰ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 8, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

\$5 million.¹⁸⁰¹ Celsius Mining is working with its advisors to mitigate some or all of this liability.¹⁸⁰² On October 12, 2022, Ernst & Young sent a letter to the Pennsylvania Department of Revenue on behalf of Celsius Mining, on a no-name basis,¹⁸⁰³ proposing the terms of a voluntary disclosure agreement.¹⁸⁰⁴ In response to a request by the Pennsylvania Department of Revenue, Celsius Mining submitted a Business Activities Questionnaire disclosing its identity and providing information about its business activities and ownership and lease of property in Pennsylvania.¹⁸⁰⁵ Celsius Mining and its advisors are also exploring the possibility of applying for relevant tax exemptions in Pennsylvania and asking that they be applied retroactively.¹⁸⁰⁶

c. Celsius's Use Tax Obligations In Texas.

Beginning in July 2022, Celsius Mining deployed foreign-sourced mining equipment at two Core Scientific facilities in Texas, giving rise to use tax

¹⁸⁰¹ Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁸⁰² Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 8, 2022); Examiner Interview of Nancy Flag (Managing Director – Ernst & Young, November 11, 2022).

¹⁸⁰³ Voluntary disclosure agreements are often initiated without identifying the name of the taxpayer.

¹⁸⁰⁴ Letter Re: Sales and Use Tax Voluntary Disclosure Request (October 12, 2022).

¹⁸⁰⁵ Business Activities Questionnaire (November 9, 2022); Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022); Examiner Interview of Nancy Flag (Managing Director – Ernst & Young, November 11, 2022).

¹⁸⁰⁶ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, November 8, 2022).

obligations in Texas.¹⁸⁰⁷ Later in 2022, Celsius Mining also deployed foreign-sourced mining equipment at its self-owned mining facility, which also generated use tax liabilities.¹⁸⁰⁸

As of December 2, 2022, Mr. Morgan calculated that the deployments of equipment in Texas in 2022 generated a potential use tax liability to Texas of approximately \$6.6 million, including \$900,000 in fees, interest, and late-payment penalties.¹⁸⁰⁹ This liability has not been paid, and Celsius Mining's management and Celsius's tax professionals are discussing potential strategies to mitigate it.¹⁸¹⁰

In addition, based on advice from Ernst & Young, Mr. Morgan told Celsius Mining that it could reduce its 2022 tax obligations by leasing the mining rigs to a new Texas company.¹⁸¹¹ According to Mr. Koren, Celsius's Chief Financial Officer and a special committee considered but declined to pursue this

¹⁸⁰⁷ Email from Jeff Morgan to Jenny Fan (August 12, 2022); Email from Jeff Morgan to Lior Koren, Patrick Holert, et al. (August 12, 2022); Email from Jeff Morgan to Lior Koren, Patrick Holert, et al. (August 18, 2022). With respect to one such facility, a Celsius Scientific facility in Denton, Texas, Mr. Morgan noted that Core Scientific did not have any applicable tax exemptions because the facility did not meet the Texas requirements with respect to occupancy. Email from Jeff Morgan to Lior Koren, Patrick Holert, et al. (August 12, 2022).

¹⁸⁰⁸ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022); Celsius Mining LLC Estimated Texas Use Tax Due as of December 2, 2022 (December 2, 2022).

¹⁸⁰⁹ Celsius Mining LLC Estimated Texas Use Tax Due as of December 2, 2022 (December 2, 2022).

¹⁸¹⁰ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 29, 2022).

¹⁸¹¹ Email from Jeff Morgan to Jenny Fan (August 12, 2022); Email from Jeff Morgan to Lior Koren, Patrick Holert, et al. (August 18, 2022); Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

strategy.¹⁸¹² Mr. Holert, Celsius Mining’s Chief Operating Officer, told the Examiner that Celsius’s special committee did not “[seem] to have any interest” in moving forward with the strategy—which Mr. Holert believed would save \$2 million—and that the strategy “seems like it’s going over everyone’s head[s].”¹⁸¹³ While Mr. Holert acknowledged there were strategic reasons not to pursue the strategy, including navigating Celsius’s bankruptcy case and related complications with forming a new subsidiary to effect the strategy, he appears not to have been included fully in Celsius’s discussions on this matter, further illustrating the compartmentalization of and lack of communication between professionals within Celsius’s tax function and its operating entities.¹⁸¹⁴

Celsius is currently storing mining equipment in a storage warehouse in Texas.¹⁸¹⁵ Mr. Morgan advised Celsius Mining on applicable exemptions that would delay use tax obligations owed to Texas with respect to the temporary storage of its equipment until deployment.¹⁸¹⁶ In general, Mr. Morgan provided

¹⁸¹² Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

¹⁸¹³ Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 2, 2022).

¹⁸¹⁴ *Id.*; Examiner Interview of Patrick Holert (Chief Operating Officer – Celsius Mining, December 20, 2022).

¹⁸¹⁵ Examiner Interview of Jeff Morgan (U.S. Senior Tax Manager – Celsius, December 8, 2022).

¹⁸¹⁶ Email from Jeff Morgan to Jenny Fan (August 18, 2022) (noting, “[u]sing the [voluntary disclosure agreement] will also allow the State to register [Celsius] Mining and issue a Direct Tax Permit. This will allow the temporary storage of Riggs [sic] in the State of Texas.”); Email from Jeff Morgan to Patrick Holert (July 27, 2022) (noting, “Texas – allows for the storage of purchases made outside the [sic] of Texas to be excluded from sales and use tax reporting, if the ultimate location of use is not known. Once the Rigg [sic] is used in Texas, use tax is required.”).

advice with respect to multiple states where Celsius Mining could potentially store mining equipment (either temporarily or indefinitely) without incurring any use tax obligations.¹⁸¹⁷

VI. Celsius Network (UK) VAT Obligations.

Celsius Network (UK) earned revenue from the sale of CEL, its lending activities, and crypto asset trading. Of these revenue streams, Celsius's outside tax advisors at Mazars opined that only crypto asset trading triggered potential VAT liability.¹⁸¹⁸ Mazars further advised Celsius that once Celsius Network (UK)'s crypto asset trading exceeded certain thresholds, Celsius would be required to register with the HMRC and pay VAT.¹⁸¹⁹

Mr. Koren told the Examiner that Celsius Network (UK) did not conduct any material business in the United Kingdom prior to January 1, 2020 that would give rise to VAT liability and any business it did conduct would have resulted in Celsius Network (UK) receiving more in refunds than any VAT that would be due.¹⁸²⁰ As a result, both Mazars and Deloitte advised Celsius Network (UK) that it did not need to register with HMRC or pay VAT for periods prior to January 1, 2020.¹⁸²¹ However, Celsius Network (UK) met the threshold to register and pay VAT in January 2020 and continued to meet the threshold

¹⁸¹⁷ Email from Jeff Morgan to Patrick Holert (July 27, 2022).

¹⁸¹⁸ Letter from Mazars to Celsius Network Limited (January 14, 2022).

¹⁸¹⁹ *Id.*

¹⁸²⁰ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁸²¹ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

through July 31, 2021.¹⁸²² Mr. Koren stated that after the migration of Celsius Network (UK)'s customer network to Celsius Network (US) in August 2021, Celsius Network (UK) no longer met this threshold.¹⁸²³

Despite meeting the threshold to register and pay VAT in 2020 and 2021, Celsius Network (UK) did not investigate its VAT obligations until Mr. Koren was hired in 2021 as Celsius's first tax professional.¹⁸²⁴ Mr. Koren told the Examiner that once Celsius hired Mazars to advise on Celsius Network (UK)'s VAT obligations, it took several months of work to determine the VAT liability because of a lack of relevant guidelines from HMRC.¹⁸²⁵

In a letter dated January 14, 2022, Mazars initially advised Celsius Network (UK) that it had an obligation to register for VAT in the United Kingdom and recommended a VAT registration be submitted to HMRC as soon as possible.¹⁸²⁶ Mazars calculated the VAT exposure as follows:

VAT due on sales (reverse charge)	\$26,590,629
VAT recoverable	\$23,931,566
Net VAT due to HMRC	\$2,659,063
Potential penalty of 15% for late registration	\$398,859
Net amount potentially due to HMRC	\$3,057,922 ¹⁸²⁷

¹⁸²² Letter from Mazars to Celsius Network Limited (January 14, 2022); Letter from Mazars to Celsius Network Limited (April 6, 2022).

¹⁸²³ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁸²⁴ *Id.*

¹⁸²⁵ *Id.*

¹⁸²⁶ Letter from Mazars to Celsius Network Limited (January 14, 2022).

¹⁸²⁷ *Id.* Celsius's counsel advised that because United States dollars are the functional currency of Celsius Network (UK), the amounts stated are the actual amounts due but also noted that when paid the liability will be translated into pounds. Celsius's counsel further advised that Mazars calculated the VAT liability to July 31, 2021 understanding that Celsius Network (UK) was retaining crypto assets that it would thereafter continue

In a subsequent letter dated April 6, 2022, Mazars concluded that it had overestimated Celsius Network (UK)'s potential VAT exposure based on its review of: (i) revised figures regarding Celsius Network (UK)'s intercompany payments; and (ii) a summary of a transfer pricing review¹⁸²⁸ that Ernst & Young performed for Celsius Network (UK) in 2021.¹⁸²⁹ Mazars' revised calculation of potential VAT exposure for the period of January 1, 2020, to July 31, 2021, is as follows:

Output VAT due on sales (under the reverse charge mechanism)	\$13,789,501
Input VAT recoverable	\$12,845,847
Net VAT due to HMRC (up to 1 July 2021)	\$943,653
Potential penalty of 15% for late registration	\$141,548
Net amount potentially due to HMRC	\$1,085,202 ¹⁸³⁰

While Celsius Network (UK) believes that it will only owe the lower amount when it pays the VAT,¹⁸³¹ Mr. Koren intends to maintain a tax accrual in excess of the original higher estimate of \$3.1 million until the liability is finally determined.¹⁸³²

to deploy for Celsius Network (US)'s benefit, and should not give rise to any additional VAT liability.

¹⁸²⁸ The transfer pricing review involved a reallocation of certain costs from Celsius Network (UK) to another Celsius entity, resulting in a reduction of Celsius Network (UK)'s VAT liability. Letter from Mazars to Celsius Network Limited (April 6, 2022).

¹⁸²⁹ Letter from Mazars to Celsius Network Limited (April 6, 2022).

¹⁸³⁰ *Id.*

¹⁸³¹ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); Examiner Meeting with Jeff Morgan (U.S. Senior Tax Manager – Celsius), Lior Koren (Vice President – Finance and Tax – Celsius), and Nancy Flagg (Managing Director – Ernst & Young) (October 13, 2022).

¹⁸³² Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); Letter from Mazars to Celsius Network Limited (January 14, 2022).

Mr. Koren confirmed that, as of November 9, 2022, Celsius Network (UK) had filed its application for VAT registration.¹⁸³³ Mr. Koren stated that Celsius Network (UK) had intended to file a VAT return by the end of 2022, with a request for mitigation of any late registration penalties,¹⁸³⁴ but did not do so because HMRC rejected its VAT registration application.¹⁸³⁵ HMRC rejected the registration because Celsius Network (UK) does not currently have a place of business in the United Kingdom.¹⁸³⁶ That rejection delayed resolution of the VAT liability.¹⁸³⁷ Mr. Koren reported that, at the end of 2022, Mazars filed a response with HMRC to clarify that, for the periods discussed in the application, Celsius Network (UK) did have a physical office in the United Kingdom.¹⁸³⁸ Mr. Koren could not provide an estimated time for resolution of the VAT liability.¹⁸³⁹

* * *

Respectfully submitted,

/s/ Shoba Pillay
Shoba Pillay, Examiner

¹⁸³³ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022); VAT Registration Questionnaire, Celsius Network Limited (July 6, 2022).

¹⁸³⁴ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, November 9, 2022).

¹⁸³⁵ Examiner Interview of Lior Koren (Vice President – Finance and Tax – Celsius, January 3, 2023).

¹⁸³⁶ *Id.*

¹⁸³⁷ *Id.*

¹⁸³⁸ *Id.*

¹⁸³⁹ *Id.*